A Comprehensive Anti-Corruption Strategy for Bosnia and Herzegovina

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Executive Summary

After the war, corruption in Bosnia and Herzegovina flourished, hindering the development of a free market economy and the transition to democracy. Recognizing the need to address this issue comprehensively, recommendations were made by the High Representative to develop a strategy to significantly reduce fraud and corruption in Bosnia and Herzegovina and support the development of a free market economy and a democratic form of government. The High Representative s recommendations were endorsed at the Bonn, Luxembourg and Madrid Peace Implementation Council meetings.

The Anti-Corruption Strategy itself has two levels: an

individual case approach and a systemic approach. The individual case approach involves direct support and assistance to local authorities in the investigation and prosecution of major corruption, fraud and economic crime cases. The systemic approach utilizes four pillars (eliminate opportunities, transparency and reporting, control and penalties, and education and public awareness) which provide the tools necessary to identify, develop and implement changes in the structure and procedures of government to significantly reduce corruption and establish a public awareness campaign.

The four major sectors of society which are impacted by corruption are identified and the strategic pillars analyzed in the context of each pillar. The *Public Revenue* sector addresses tax simplification, revenue collection, the establishment of a treasury function, the payment bureaus and a review of aid institution procedures. The *Rule of Law* sector reviews general judicial reform efforts currently underway and addresses the need for anti-corruption laws, task forces and training. The *Institutional* sector discusses the need for a border service, parliamentary commissions, the creation of a Supreme Audit Institutions and Transparency Offices as well as reform of the civil service and government regulations. The *Public Awareness* sector addresses the need to educate all segments of Bosnia and Herzegovina society as to the costs and effects of corruption, and to raise public awareness and intolerance for abuse of public office.

Specific “action plans” are included for each of the sectors, identifying the tasks which need to be completed, which organizations are responsible for their completion and target completion dates.

The strategy is envisioned to be a flexible document and will be reviewed and modified to reflect the lessons learned as it is implemented. The organizations identified in the strategy will meet periodically under the coordination of the Office of the High Representative to report progress made, problems

encountered and develop any necessary changes in the strategy.

Introduction

Background: Three years after the implementation of the Dayton Peace Accord, the attention of the international community has focused with increasing intensity on the endemic fraud and corruption in Bosnia and Herzegovina (BiH). ***Fraud,*** in the context of this strategy, refers to illegal deceptive activities in general, of which ***corruption*** is a component. For the purposes of this strategy, OHR has adopted the definition of ***"corruption"*** developed by the World Bank: ***Corruption is the abuse of public office for private gain***. While the strategy will primarily address ***corruption,*** it is unavoidable that other elements of ***fraud*** will also be included.

While fraud and corruption exist in many forms, the result is always the diversion, misappropriation or waste of public and private resources. Corruption not only costs society in terms of diverted or wasted financial resources, it undermines the very legitimacy of government and public confidence in democracy. It fosters and facilitates increased criminal activity, particularly in the area of organized crime. ***All of these factors combine to erode the foundations of an emerging democratic society.***

The citizens of BiH are the real victims of fraud and corruption as they receive fewer government services while paying relatively higher taxes to offset the losses caused by illegal activity. In a country where the international community has invested billions, and continues to provide significant support, fraud and corruption cannot and will not be tolerated.

OHR Anti-Fraud Unit: During 1997, a number of reports released by the European Commission s Customs and Fiscal Assistance Office (CAFAO) program, publicly exposed extensive corruption, fraud and diversion of public funds in BiH. At the December

1997 Peace Implementation Council (PIC) in Bonn, the Council endorsed the High Representative s proposal to form an Anti-Fraud Unit to assist authorities in Bosnia and Herzegovina identify illegal activities and to coordinate international technical assistance. The Unit was established within the OHR Economics Department in April 1998.

The Steering Board of the Peace Implementation Council, at its Luxembourg meeting in June 1998, welcomed the creation of the Unit and encouraged the High Representative to coordinate the efforts of the International Community in the field of corruption to implement a comprehensive strategy. The Luxembourg Peace Implementation Council also called for public budget processes which were fiscally sound, realistic, transparent and operative, and called on public authorities to promote a culture of public accountability. The Steering Board urged the authorities, in particular the Entities, to undertake more actions and reforms to reduce the scope of corruption and misuse of public funds. The Steering Board further warned that the international donor community and the people of Bosnia and Herzegovina would not continue to tolerate budget irregularities and corruption.

The Madrid Peace Implementation Council, meeting in December 1998, welcomed the High Representative s intention to strengthen the Anti-Fraud Unit and the European Commission s intention to strengthen the Customs and Fiscal Assistance Office (CAFAO) program. The Council called on all involved members of the International Community to work closely together under the coordination of the High Representative to combat corruption, organized crime, and other actions which divert public funds and undermine democratic institutions.

The Strategy: The Madrid Peace Implementation Council reiterated the concerns of the international community in regard to corruption in BiH and summarized the need for a comprehensive strategy:

> ***The Council expresses deep concern about continuing corruption and evasion of public funds. It welcomes the High Representative s development of a comprehensive anti-corruption strategy which will be presented to the Steering Board in early 1999. The strategy will provide the framework necessary to identify, develop and implement changes in the structure and procedures of government, to significantly reduce corrupt activities and to establish a public awareness program. The strategy will contain specific action plans identifying the international organizations and local agencies responsible for implementation, as well as timelines. The High Representative will take the lead in co-ordinating International Community efforts aimed at eliminating opportunities for corruption, tax evasion and diversion of public revenue; ensuring transparency in all phases of governmental operations; strengthening the legal system and the judiciary; and implementing control mechanisms with appropriate penalties to ensure compliance. A key component of the strategy will be to develop a public awareness campaign to educate citizens about the deleterious effects of corruption on their lives and on society. The Council emphasises again that it will not allow the impact of funds expended by donors to be diminished by corruption and fiscal evasion of domestic revenue.***

This paper outlines the main components of an anti-corruption strategy, as developed by the International Community, with support and recommendations from local officials, which provides the necessary framework for local authorities to identify and significantly reduce fraud and corruption in Bosnia and Herzegovina. The paper consists of three parts: Chapter One discusses the status of corruption in Bosnia and Herzegovina; Chapter Two discusses the strategy and its main pillars; Chapter Three identifies five major sectors in BiH society and discusses the application of the strategic pillars

to each sector, identifying action plans, timelines and responsible organizations.

The strategy is envisioned to be a flexible document and will be reviewed and altered to reflect the lessons learned in the ongoing efforts to eliminate fraud and corruption and to build a democratic society with a sustainable free market economy. The organizations identified in the strategy will meet periodically, under the coordination of OHR, to report progress made, problems encountered and develop necessary changes in the strategy.

Chapter I

CORRUPTION IN BOSNIA AND HERZEGOVINA

Corruption exists in all societies to varying degrees and prior to the 1992-95 war, Bosnia and Herzegovina was no exception. During the war, however, the country experienced a breakdown in governmental structures which provided an environment in which corruption thrived. These corrupt activities continued to flourish after the war as the new governments worked to establish themselves under the Dayton structures.

While any country in transition is ripe for corruption, BiH is at greater risk as it is simultaneously undergoing a transition from a war time to a peace time environment, from a centrally controlled economy to a free market economy, and from a socialist style government to a democracy.

The situation that BiH found itself in after the war was summarized in a Transparency International Report in March 1998:

> ***As the most casual observer would know, the country of Bosnia and Herzegovina faces problems that should intimidate even the most resolute. It has not only just emerged from a bloody conflict with its physical***

> ***infrastructure quite literally shattered and with the legacy of bitterness and distrust which the inter-communal violence has spawned, but also with a peace process that is not yet assured. Further compounding this was the rampant corruption and profiteering which had flourished during the war, creating criminal centers of power and influence – smuggling organisations and links throughout the region that remain intact and busy today…..These would be difficult enough to cope with. However, Bosnia and Herzegovina has also all the deep-seated problems it inherited from the communist regime and a style of government that was essential[ly] top-down, with "rule of party" rather than "rule of law", and an absence of accountability and transparency let alone a culture of consultation and consensus-building.***

The actual extent of corruption in BiH was summarized in an assessment sponsored by the United States Agency for International Development (USAID) in March , 1998.

> ***For the economic and democratic development of Bosnia and Herzegovina to succeed, the large-scale fraud and corruption in the government must be reduced substantially. Bank fraud, customs fraud, tax fraud, procurement fraud, bribery, extortion and an active organized crime network severely undermine economic and democratic reforms. The losses resulting from fraud and corruption appear massive, yet cannot be quantified accurately due to the lack of transparency in government and business operations……A lack of public disclosure and accountability of public funds makes discovering and proving the scope of fraudulent activities in government impossible.***

It is possible, however, to get some idea of the public revenue lost to fraud and corruption through anecdotal evidence, such as the various reports released in 1997 and 1998 by the CAFAO program. A recent joint Federation –

Republika Srpska customs operation against an organized smuggling ring, facilitated by a CAFAO program, is estimated to have prevented a potential annual loss to BiH authorities of 140 million DM in customs revenue and sales and other taxes.

Although there have been some local efforts to investigate and combat corruption, they have generally been ineffective. In 1997 the Federation House of Representatives created a Commission to look into possible areas of corruption. The Commission, which became operational in 1998, lacked the powers to compel the cooperation of governmental agencies and did not have the power to compel the attendance of witnesses or the production of documents. As a result, the Commission had little effectiveness. A corruption commission was also created by the Chairman of the BiH Presidency to look into fraud and corruption, but it never became operational. Both of these efforts predated the creation of OHR s Anti-Fraud Unit.

Unfortunately, except for recent cooperation in the customs area, the political will necessary to successfully combat corruption is rarely demonstrated by Bosnia and Herzegovina government officials. This, along with weaknesses in government structures, has resulted in a lack of anti-corruption safeguards and procedures. Corruption has, therefore, not only found a fertile environment in Bosnia and Herzegovina, it also encounters little government resistance.

Chapter II

STRATEGY

A. Overview

Implementing a comprehensive anti-corruption strategy necessarily involves most aspects of economic reform as well as legal/judicial reform, institutional reform, including the police, and creating public awareness about the cost of corruption and its effect on citizens lives and on society in

general. Economic reforms are well underway as are legal and judicial reforms. Revision of financial procedures and structures in both Entities has been initiated. The European Commission s CAFAO program has made progress in its anti-corruption and fraud prevention efforts in the customs field and is now addressing the effectiveness of fiscal controls in indirect taxation, including the investigation of organized fraud and corruption.

While all of these reforms have anti-corruption components, much of the effort has been developed without overall coordination or consultation. In addition, while the ongoing anti-corruption efforts are important components of the overall strategy, they are simply not enough. Additional strategies and programs which are necessary for an effective anti-corruption strategy need to be developed, coordinated and implemented.

The strategy has two levels: the first level establishes an overall systemic approach to combat corruption, while the second level involves assistance in individual corruption cases.

1. Systemic Approach

The systemic approach utilizes four pillars which provide the tools necessary to identify, develop and implement changes in the structure and procedures of government to eliminate or significantly reduce corrupt activities and to establish a public awareness program. The four strategic pillars are: *Education and Public Awareness; Eliminate Opportunities; Transparency and Reports; Controls and Penalties.* The first pillar, which provides for public education and training, underpins every sector. The remaining three pillars are, to a degree, sequential in nature. The second pillar seeks to identify and eliminate the opportunities for corruption, thereby eliminating the problem at its source. The third pillar addresses governmental functions. By requiring

transparency in all phases of governmental operations and by requiring financial reports, it creates an environment in which corruption cannot hide and makes government more accountable. The fourth pillar provides legal standards and civil and criminal penalties for corruption which is not deterred by the other pillars.

Following the discussion of the strategic pillars, the major sectors of society which are impacted by corruption are identified and the strategic pillars analyzed in the context of each sector.

2. Individual Case Approach

The second level of the anti-corruption effort is to coordinate assistance to local authorities in the investigation and prosecution of major corruption, fraud, and economic crime cases. The Anti-Fraud Unit, together with other international organizations, provides assistance and support to police, prosecutors and investigating judges in individual cases and monitors judicial proceedings involving corruption. The Unit s role is comparable to the role of United Nations Mission in Bosnia and Herzegovina (UNMIBH), the role of the International Police Task Force (IPTF) with the police, and the CAFAO program with revenue collection authorities. Due to the sensitive nature of these cases, it would be inappropriate to discuss these efforts in any detail.

There are several benefits to this approach. Local authorities benefit from the international communities experience and resources in regard to major case investigations and prosecutions. Press coverage of corruption investigations and prosecutions send an immediate message that the battle against corruption has a high priority. In addition, the international community benefits as it gains first-hand experience with the problems encountered by local authorities in their efforts to combat corruption. This experience allows modification of the overall strategy when necessary to better address the

practical and political problems in the current system.

B. Strategic Pillars

Pillar 1 – *Education and Public Awareness*

An informed citizenry is crucial for the success of any anti-corruption program. If the public is apathetic towards corruption and accepts it as an inevitable presence, efforts to alleviate corruption will be futile. All segments of society, from children in primary school to the business community and government officials, must be made aware of both the nature and consequences of corruption – what it costs the average citizen in the nature of lost government services and the consequences for the establishment of a democratic society. Through transparency and audit reports, information will be available as to how the government is collecting, managing and expending the public s money. The mere availability of this information to a public unaware of the methods, costs and effects of corruption, however, will have little effect. A comprehensive awareness campaign directed at all aspects of BiH society is necessary to raise public awareness and intolerance for abuse of public office.

Pillar 2 – *Eliminate Opportunities*

Once corruption has taken root, it is difficult to detect and combat. The best defense against corruption is preventative measures which reduce the opportunity for corrupt actions. This strategic pillar, therefore, identifies areas where corruption currently exists and areas where there is potential for it to develop. Once the opportunities are identified, action plans are developed to eliminate or reduce them.

Actions under this pillar would include, for example, the adoption of laws defining conflicts of interest and ethical standards for government officials and employees, regulating the financing of political campaigns, and requiring financial disclosure for political parties as well as elected and high-

level appointed officials. In addition, much can be done to eliminate opportunities for corruption without the adoption of new laws by simply changing existing government procedures, policies and regulations.

Pillar 3 – *Transparency and Reporting*

When used in the government corruption context, “transparency” refers to the openness of government in its procedures and decision-making processes. Corruption thrives behind closed doors but finds it difficult to exit when those doors are open to the light of public scrutiny. When government officials know that the decisions they make are not subject to public view or justification, the temptation for corruption is high. When government officials know that their decision-making processes will be open to public review and that they must be able to justify their decisions to the public, the temptation for corruption is significantly reduced.

There can be no effective democracy without access to information on how the government functions. A lack of information impedes the political education of the electorate which, in turn, forces voters to make uninformed choices at the ballot box. Furthermore, excessive secrecy in government results in a political climate where the public views the government with distrust.

The first step in creating transparency in government is the adoption of laws which establish the public s right to observe government operations, deliberations and decisions. That right must also include the right to review government documents. This right of access, of course, cannot be unlimited. Where confidential information pertaining to sensitive governmental areas is involved, as well as individual privacy information, the right should be limited. Since most government financial and procurement procedures and decisions do not involve any sensitive or individual privacy issues, however, they should be open to public scrutiny. The law should also provide for

personal financial penalties against government officials who do not comply with requests for disclosure.

Another critical step is the creation of transparency offices at the state, entity and local levels of government, which would be responsible for reviewing existing and proposed laws and procedures and, when necessary, recommending changes to ensure transparency. The governmental agency involved should be required to either adopt the recommended changes or provide a written explanation as to why the changes are not necessary. The transparency office, if not satisfied with the response, would then propose the necessary legislation to the parliament to implement the change. The office would also receive and have the authority to review complaints from citizens who claim their right of access to public information has been denied or hindered.

In addition to transparency, audits of all governmental and quasi-governmental functions are necessary to ensure that public funds are being properly expended. The audit reports will be made available to the parliaments and the public. An effective, independent, audit system is the only method which will inform both government officials and the public as to whether funds are being spent and accounted for properly. This process not only provides the parliaments with a quantifiable measurement of the government s efficiency, it also provides the public with the information necessary to cast an informed ballot. It must be noted, however, that while audits are a critical safeguard, without reform of the underlying budgeting, financial management and accounting systems, the benefits obtained from the audits will be limited.

Pillar 4 – *Controls and Penalties*

While Pillars 2 (Eliminate Opportunities) and 3 (Transparency and Reports) are preventive and deterrent in nature, Pillar 4 establishes standards of behavior and provides the necessary tools for government to investigate, prosecute and punish

those who participate in corrupt activities. Investigative techniques and criminal laws must be developed and continuously updated to combat the sophisticated nature of crime and corruption in today s world. Punishments must have a true deterrent effect and not just be a cost of doing business for individuals or businesses who participate in corrupt activities. To the extent possible, investigation and prosecution of serious fraud and corruption should be undertaken at the entity level. Civil laws also must be adopted to change the structure of government institutions and ensure transparency.

This strategy will be implemented by the International Community, together with local officials, under the coordination of OHR. Through periodic meetings of the Anti-Corruption Coordination Group, comprised of all the organizations involved in the anti-corruption efforts, OHR will monitor and coordinate the progress of the strategy. Another important role of the Coordination Group will be that of a clearing house to report all assistance and reform efforts of the International Community in the anti-corruption area to avoid duplication of effort. As noted, the strategy is intended to be a flexible document which will be continually reviewed and altered to reflect the lessons learned through the International Community s ongoing efforts to eliminate fraud and corruption in BiH.

Chapter III

SECTOR ANALYSIS

A. Public Revenue

1. Tax Simplification and Harmonization

Tax reforms in BiH are typified by problems commonly found in transition economies. For instance, weak tax collection structures and inconsistent collection efforts continue to be a problem. But BiH also has challenges not commonly found in

transition economies. The two Entities initially adopted different tax rates which, while not technically illegal or in conflict with the Dayton Accord, encourage tax avoidance and a subsequent loss of tax revenues. While the international community has been urging the Entities to harmonize tax rates, that remains an area of Entity discretion.

Initial steps have been taken in regard to harmonization and cooperation between the Entities. On August 11, 1998 the Ministers of Finance of both Entities entered into an agreement to remove obstacles to free trade of good and services between the Entities. The Ministers pledged to harmonize excise rates and sales taxes, and harmonize the point of collection of taxes and the bases on which taxes are calculated. The Ministers further pledged to cooperate on tax collection and tax evasion issues. The U.S. Treasury Department has an ongoing project to simplify and harmonize tax rates and the CAFAO program is working to develop administrative cooperation between the Entities, which will also contribute to harmonization. While these efforts will have the direct effect of reducing distortions and impediments to trade, an important indirect effect will be a reduction of the opportunities for corruption.

Actions: Harmonize the point of collection of sales and excise taxes by July 1999. Pass legislation in both Entities to harmonize excise rates and sales tax rates by December 1999. Revise personal income and corporate income tax laws by December 1999. The profit tax law needs to be reviewed and amended to deal with privatization issues by December 1999. (U.S. Treasury) Continue simplification of tax structures. (U.S. Treasury)

2. ***Customs Revenue and Tax Collection***

The correct collection of customs and tax revenue is essential for the economic development of BiH, as well as to ensure free and fair trade. Effective customs and tax systems require the

introduction of well-organized, structured and efficient customs and tax services. Both Entities have made progress in this field and are currently focusing on the introduction of appropriate compliance and enforcement sections to address fraud and evasion issues.

The European Commission s CAFAO program has identified those areas in the customs and indirect taxation fields requiring further development in order to establish self-sustaining customs and tax services. These areas span the 4 Anti-Corruption Strategic Pillars and comprise projects within the fields of:

- Legislation & Procedures
- Organization and Infrastructure
- Training
- Compliance and Enforcement
- Computerization
- Mutual Assistance Agreements with Other Customs & Tax Authorities
- Access to Customs Related International Conventions
- Internal Audit and Management Assurance

The CAFAO program has proposed detailed projects incorporating all of the above-mentioned fields within the Customs and Indirect Taxation Services, and has included an implementation plan.

Action: Introduce effective legislation on customs enforcement by June 1999. Introduce formal agreements on customs co-operation between the Entity Customs Administrations and agreements on tax co-operation between the two Tax Administrations by June 1999. Introduce effective customs seals by June 1999. Improve customs revenue compliance in each Entity and establish an effective customs enforcement capacity by December 1999. Introduce mutual assistance agreements on customs with neighboring countries by December 1999. Introduce the concept of management assurance and internal audit in the

Customs and Tax Administrations by December 1999. Improve tax revenue compliance in each Entity Tax Administration by December 2000. Establish effective debt management legislation and procedures in both Tax Administrations by December 2000. Phased implementation of the agreed customs computerization system in both Entity Customs Administrations, with full implementation to be completed by June 2001.

(CAFAO)

3. Treasury Function

The primary mandate of a Treasury is to optimize the financial management of government resources, by ensuring – – through the careful programming and monitoring of inflows and outflows in the government accounts – – that spending agencies are provided, in a timely manner, the resources needed for a smooth

provision of public services, while minimizing the cost of government financing. In June 1998 the Steering Board of the Peace Implementation Council, at its Luxembourg meeting, called for public budget processes which were fiscally sound, realistic, transparent and operative, and called on public authorities to promote a culture of public accountability.

An effective Treasury is also a powerful tool in the prevention of fraud and corruption within the financial sector of government. Proper budget planning results in spending within fiscal constraints and on the basis of macroeconomics and strategic targets, which in turn eliminate the opportunity for unjustified expenditures. Modern accounting systems and a treasury function which authorizes and controls payments reduce the opportunity for corruption while increasing the ability to discover corruption where it does exist. The treasury function must be established at the state, entity and local levels of government.

Of particular importance is the creation of procurement

systems at the various levels of government based on the principles of economy, efficiency, accountability and open competition. A Procurement Monitoring and Audit Unit (PMAU) has been established in the Federation in regard to the procurement process in reconstruction programs and a second unit should be established in the Republika Srpska. The PMAU is primarily used to vet the use of World Bank procurement. The concept should be institutionalized and extended to all public sector procurement, irrespective of the origin of the funding.

Based upon standards and procedures established in the World Bank s "Bosnia and Herzegovina Public Expenditure Review" the Entity governments have made some initial progress towards budget reform. The U.S. Treasury Department has developed a program to establish the efficient management of public funding through transparent budgets and accountability.

Transparent Budgets: Transparency dictates that public expenditures and revenues be reflected in the budget and that the use of public funds be clearly specified. This is accomplished by developing a budget classification system; discouraging the build up of unrecorded arrears; establishing careful controls on budget execution; developing comprehensive budgets; and developing an internal and external audit function.

Of particular concern are unrecorded off-budget revenues and expenditures, which must be brought into and reflected in the budget. In the Federation these unrecorded revenues and expenditures are often linked to parallel, ethnic-based power structures. Foreign aid should also be brought into the budgets to ensure that it is properly reflected and to eliminate the opportunity for misuse of donor funds.

Excess profits from public companies such as the telecommunications and power enterprises must be brought into the budget until such time as they are privatized. The profits

from these enterprises are not routinely transferred into the budgets and there is very little transparency in their financial operations. These enterprises must be made financially accountable to an appropriate ministry and, through the ministry, to the parliament.

A comprehensive budget system law which authorizes a treasury function in the Ministries of Finance and includes some transparency provisions has been adopted by the Federation and will be adopted by the Republika Srpska. The Federation has also adopted a budget classification system which was used in the development of the 1998 budgets.

U.S. Treasury has developed a rule book on charts of accounts and bookkeeping and a rule book on financial reporting, which are expected to soon be adopted by the Ministries of Finance. The Federation Ministry of Finance needs to revise an order regarding the payment accounts of public revenues to include all public revenues. Yet to be done in this area are the establishment of controls on budget execution, i. e., establishing treasury departments in the Ministries of Finance; establishing a single treasury account for each level of government; and closing all budget institutions revenue and spending accounts at the Payment Bureaus. A similar program is planned for the Republika Sprska.

OSCE is currently providing training to municipal governments in capital planning and budgeting, as well as assisting them with public budget meetings and other tools of transparency. This training is part of a six-month project which will involve approximately 61 municipalities and is scheduled to conclude in June 1999. Depending on the success of the first six-month project, there is the possibility of a second six-month project.

***Accountability*:** This requires that public managers be held accountable for the resources entrusted to them and that the budget process be open to the public. Public debates on

spending options should be held and audit reports made available to the parliaments and public. Some cantons and municipalities held public hearings on proposed budgets for the 1998 budget year. Yet to be done in this area are the establishment of an auditor general (Supreme Audit Institution) to report to the parliaments, and the establishment of internal auditors within each Ministry of Finance. (See Chapter III, C, 3, Audit Function)

Action: Establish treasury departments in the Ministries of Finance by January 1, 2000. Establish a single treasury account for each level of government by January 1, 2000. Close all budget institutions revenue and spending accounts at the payment bureaus by January 1, 2000. (U.S. Treasury)

4. Payment Bureaus

The Payment Bureaus in BiH are direct descendants of the former socialist Yugoslavian payment system. The Zavod za Platni Promet (ZPP) in the Federation and the Sluzba za Platni Promet) (SPP) in the Republik Srpska exercise monopoly powers over the payments sector and have considerable additional authority. Further, although there is legally only one payment system in the Federation, the Payment Bureaus in the Croat majority areas (ZAP Zavod za Platni Promet) continue to operate independently as a parallel institution. In addition to their payment system responsibilities, the Payment Bureaus are involved in:

the collection of financial data;
tax collection;
treasury operations;
accounting services;
and the management of the reserve accounts of banks along with the Central Bank of Bosnia and Herzegovina.

With these powers, the Payment Bureaus play a central role in the economy of both Entities. Due to the lack of transparency,

strong linkage to political parties and their unprecedented power and authority over all economic and financial activities, the Bureaus have a serious negative impact on the business and financial sectors. As a result of these restrictive controls, an estimated 50% of the economy operates underground, thus depriving the government of significant revenues.

Unquestionably, these institutions exert a degree of control over the fiscal management decisions of private business which is inconsistent with a free market economy. The strict limits on businesses stifles business independence and flexibility. The role of banks in BiH is marginalized as a result of the Bureaus dominance in the financial sector. To develop sustained growth in the economy, a vibrant innovative banking system is required and such a system simply cannot exist under the current conditions.

All of the strategic pillars impact the Payment Bureau area. Short-term reforms are needed in regard to tax collection and financial control. The concept of transparency and public scrutiny is virtually non-existent. The internal operations of the Bureaus remains a mystery and international organizations not only have been unable to obtain reports of their activities, they were unable to ascertain whether these reports were even prepared by the Bureaus. Though the income of the Bureaus is thought to be considerable, its disposition is unknown. There is significant concern that revenue from the Bureaus is used to finance illegal, parallel institutions.

Existing laws must be amended or repealed and new laws need to be developed in regard to the commercial bank payment services and other reform areas. International lenders and businesses as well as local business organizations and the public need to be informed of the details of the reforms to foster confidence in the economic system.

Significant work on the payment systems has already been done

by the International Monetary Fund (IMF), the World Bank, USAID and EC PHARE. Upon the completion

of a final study by USAID on the structure, conduct and function of the Bureaus, as well as survey results from both the banking and business sectors, a comprehensive strategy will be adopted to reform and phase out the bureaus by December 2000.

Action: A detailed plan for reform of the Payment Bureaus will be submitted by February 1999 and an overall strategy will be agreed upon by May 1999. The reform of the Pay-ment Bureaus will commence in June 1999 which will lead to their dissolution by December 2000. (USAID, IMF, World Bank, EC PHARE, OHR)

5. Review of Aid Institution Procedures

The Bonn Peace Implementation Conference noted concern over the procedures utilized by some aid institutions in the distribution of aid in BiH.

> ***Reconstruction funds managed by aid institutions lacking adequate control structures , and remaining outside the aid co-ordination structure are vulnerable to fraud. The Council urges members to ensure that aid institutions using public funds participate in the co-ordination structure and use the services of existing Project Implementation Units as necessary.***

Many donors and aid institutions have sophisticated monitoring programs which ensure that the funds they distribute are used for their intended purposes. However, some smaller aid institutions lack built-in control mechanisms which would help protect them against fraud in the use of their resources. These weak structures make programs vulnerable to corruption and provide poor examples of project management techniques to recipients.

At a minimum, all projects should include a “no-bribery” pledge, transparency in the selection of consultants and in-depth no notice audits.

Action: **OHR, together with other international organizations, will coordinate plans to review aid institution procedures by April 1999. By July 1999, OHR will initiate reviews of aid institutions and will provide information and recommendations to those institutions whose distributions systems lack the necessary built-in protection mechanisms. (OHR)**

B. Rule of Law

Development of the “rule of law” in Bosnian society involves all of the pillars of the strategy. Laws must be adopted to eliminate opportunities for corruption (Pillar II) and to authorize audit functions and ensure transparency (Pillar III). The development and adoption of new civil and criminal laws and regulations are necessary to deter and combat fraud and corruption. The tools necessary for the government to investigate, prosecute and punish those involved in corrupt activities must be developed and implemented (Pillar IV). Crucial to the success of the rule of law is the training necessary for police, prosecutors and judges to familiarize them with the new provisions and improve their professional skills. Increasing public awareness of the government s efforts will also add to the success of the rule of law (Pillar I).

A primary goal in this sector is to develop a legal framework which will provide local officials with the tools necessary to effectively address the corruption problem. ***When the international community leaves Bosnia and Herzegovina, a viable long-term anti-corruption system must be established and in operation.***

While judicial and legal reform in Bosnia and Herzegovina is recognized as a critical element of the peace implementation

process, it is absolutely crucial to the success of the anti-corruption strategy. ***The establishment of the rule of law is essential in building confidence in the government and the democratic system.***

The perception of the rule of law in BiH by potential investors is not favorable and certainly has an impact on their investment decisions. The Wall Street Journal s Central European Economic Review recently provided a comparison of 27 countries in Central/Eastern Europe and the former Soviet Union. When it compared a number of political and economic categories, BiH ranked 26th , or next to last, in the rule of law category.

OHR currently provides overall coordination for the legal and judicial reform efforts in BiH and this cooperative effort has identified a number of reform initiatives. While all of these initiatives have an impact on anti-corruption efforts, there are several areas which are specific to the anti-corruption area. The general reform areas include: Judicial Independence and Professionalism; Court Monitoring; Criminal Code Revision; Enhancement of the Prosecutor; Restructuring and Training of Police; and the Judicial Training Center. These general reform initiatives are coordinated by the OHR Judicial Reform Coordinator and supported by the Anti-Fraud Unit.

Initiatives which are specific to the anti-corruption area include: Anti-Corruption Legislation; Anti-Corruption Task Forces; and an Anti-Corruption Training Program. These initiatives are coordinated by the Anti-Fraud Unit of OHR. The general reform initiatives are discussed first, followed by a discussion of the specific anti-corruption initiatives.

1. Judicial Independence and Professionalism

The independence and professionalism of the judiciary is perhaps the most important of all reforms in establishing the rule of law. Strong laws, professional police and diligent

prosecutors are all for naught if the judiciary remains corrupt, incompetent or bias. In the eyes of the public, nothing undermines the foundation of the rule of law quicker than a judiciary which fails to uphold the very laws and legal principals it is created to protect. Further, once independent and professional judicial decisions are made, the government structure must be in place to ensure implementation of the decisions.

Recent judicial selection in BiH has, in many instances, been the product of political patronage. This has resulted in the appointment of some individuals with little regard to qualifications and whose primary loyalty is to the party which secured their appointment. Since all corruption cases necessarily involve public officials or employees, a judiciary reliant upon the political party in power will always be questionable.

Legislation creating a Judicial Service Commission in each Entity is currently being developed by OHR in consultation with other international organizations and the Judicial Associations of each Entity. Following a review by a Council of Europe s expert group, the legislation will be presented to the Entity governments in early 1999. The laws will ensure the selection and appointment of judges based on qualifications, rather than political ties.

The salaries of judges in both Entity s are too low to enable many of them to properly support their families. The judicial salary levels in the Republika Srpska range from 300 to 350 DEM per month. While judicial compensation in the Federation is somewhat better, the salaries are still inadequate for judicial positions.

This situation results in a susceptibility to corruption that tempts otherwise honest individuals. Hand in hand with diminished salaries is a lowered social standing. Other civil servants, such as police, often have higher salaries than

judges. All of this contributes to the low esteem in which members of the public regard judges and the judicial system in general which, in turn, makes it more difficult to recruit qualified individuals to the bench.

A law on Judicial Compensation for each Entity is currently being developed which will improve and attempt to equalize the salaries in each Entity. However, the funds for the increased salaries must be the responsibility of the Entities and/or Cantons rather than the International Community. The judicial system budget must also be separate and independent from that of the executive to ensure independence from improper influence. In addition, the judicial systems in both Entities lack the necessary facilities and resources to effectively perform their responsibilities in a timely and professional manner. It is critical that efforts now underway to identify the technical, financial and material needs of the courts are completed and that a coordinated assistance program is developed. OSCE has taken the initial steps in this area by conducting a judicial survey in both Entities.

These revisions, along with the strengthening of the professional Judicial Associations and adoption of Judicial Codes of Ethics, will result in an independent professional judiciary which is the cornerstone of the rule of law. ***An independent judiciary cannot be established and maintained, however, without strong political and public support.***

Action: Coordinate and finalize the draft of Judicial Service Law and Judicial Compensation Law with the Council of Europe and Judges Associations and present to the Federation and Republika Sprska governments by April 1999 with passage by July 1999. (OHR, CoE, OSCE, UN JSAP). Complete a needs survey of judicial facilities and resources at all levels of government, identify the technical, financial and material needs of the judiciary and identify a funding program by June 1999. (UN JSAP, OHR)

2. Court Monitoring

The purpose of court monitoring is to obtain accurate, comprehensive information concerning the functioning of the courts to refine ongoing reform efforts, and to deter abuses and promote fair trials by providing international scrutiny of priority cases. Court monitoring sends a message to the judiciary and public that corruption in the judicial system will not be tolerated and ensures transparency in court proceedings. Given the influential positions of those governmental officials typically involved in corruption, the monitoring of corruption cases is an absolute necessity. Currently the Anti-Fraud Unit, CAFAO and IPTF monitor corruption, fraud and economic crime cases and the presence of those representatives in various judicial hearings has had a positive impact.

In July of 1998, the United Nations endorsed the establishment of a judicial assessment project within the United Nations Mission In Bosnia and Herzegovina (UNMIBH). The Judicial System Assessment Program (JSAP) has local and international attorneys assigned to each of the seven UNMIBH regions in Bosnia and Herzegovina. The project is primarily an assessment program but expects to perform some court monitoring in support of its assessment efforts. OHR will coordinate with JSAP in regard to the possible monitoring of corruption cases and will utilize the overall assessment results to ensure that identified problems and weaknesses are reported and reflected in the international community s judicial reform efforts.

Action: OHR will continue to monitor, in coordination with CAFAO, IPTF and other international organizations, cases involving corruption and will coordinate with UN JSAP the possibility of future monitoring of corruption and other economic crime cases. (OHR, UN JSAP)

3. Criminal Code Revision

Following the adoption of the Dayton Accords, the criminal justice system in both Entities was essentially the system developed in the former Yugoslavia. Expert groups comprised of both international and local experts were established by the Ministries of Justice in each Entity to study and revise the criminal laws.

Due to the extent of the revision necessary to update the codes and bring them into compliance with human rights standards and modern criminal jurisprudence, a two- phase approach was adopted. Phase I of the revision was designed to bring the Criminal Codes and the Criminal Procedure Codes into compliance with the relevant human rights laws, particularly the European Convention on Human Rights, and to make the changes necessary to reflect the new governmental structure. Phase I was recently adopted in the Federation and came into effect on 28 November 1998. The Phase I draft in the RS is nearing completion.

Phase II of the reform will be much more comprehensive and will encompass a number of substantive issues, many of which will include needed laws crucial to the governments efforts against fraud and corruption.

Action: The Republika Srpska Phase I reform is expected to be completed by June 1999 and adopted by the National Assembly shortly thereafter. Expert groups for Phase II will be established by each Ministry of Justice comprised of local and international legal experts. The groups are expected to commence work on Phase II in the Federation in March 1999, and in the Republika Sprska following the adoption of Phase I. Due to the comprehensive nature of Phase II reforms, they are not expected to be complete until June 2000. (OHR, CoE, UNCICP, and UN JSAP)

4. Enhancement of Prosecutors

Under the former Yugoslavian justice system, the prosecutor s

role was relatively weaker than was generally found in modern western and central European countries. The Luxembourg Peace Implementation Council (PIC) recognized this inadequacy in calling for the enhancement of the prosecutor s role. The Madrid PIC specifically called for the strengthening of the role of Entity level prosecutors. Phase I of the Criminal Code reform took the initial steps to rectify this situation; and Phase II will include a comprehensive review and enhancement of the prosecutor s role in both Entities.

The enhancement of the Federation Prosecutor s Office is particularly crucial given the governmental structure of the Federation. Even though the Federation Prosecutor s Office has oversight of the cantonal prosecutors and the Constitutional responsibility to prosecute crimes which are exclusively within the Federation s jurisdiction, the office lacks the necessary authority or resources to meet its mandate. While the Republic Prosecutor s Office in the RS has more direct authority over lower level prosecutors, it also lacks the financial resources, equipment and staff to effectively prosecute cases or properly supervise local offices. An improvement plan for the Prosecutor s Office has been designed for the Federation which will provide the resources to add a core group of professional prosecutors and the necessary infra-structure support. Proposed legislation has also been developed which will grant the Federation prosecutor the same authority as the cantonal prosecutors have under the Phase I revision of the Criminal Procedure Code and will clarify the jurisdiction of the Federation Supreme Court in regard to exclusive jurisdiction Federation crimes. The Republic Prosecutor has drafted amendments to the RS Criminal Procedure Code to clarify the relationship between prosecutors and police and has developed an assistance plan for his office which identifies the needs for the Republic Prosecutor system.

Training for prosecutors, consistent with the new codes and procedures and their enhanced roles is necessary at every

level. Necessary training includes: techniques in case presentation; use of experts; handling evidentiary issues; case management and administration; case review; and coordinating investigations with police to provide a team approach from the beginning to the end of cases.

The salary structure of prosecutors suffers from the same inadequacies as the salary structure of judges, particularly in the Republika Srpska. The present salary system for prosecutors must be revised and increased at the same time as the judges salary system. In addition, the lack of technical, financial and material support for prosecutors offices presents a significant obstacle to the development of a modern coordinated prosecution system in each Entity. A needs survey is currently being conducted for prosecutors offices and a coordinated assistance program must be developed to meet the crucial needs.

Action: Training on the new Criminal Code and Criminal Procedure Code for prosecutors will enter the second (mentoring) stage in February 1999 with the main training component scheduled to commence in April 1999. (DOJ/ CEELI) Implementation of the proposal to enhance the Federation Prosecutor s Office and the Republic Prosecutor s Office are scheduled to be completed by June 1999. (OSCE, OHR) Legislation addressing salaries will be drafted and presented for adoption by June1999 in the Republika Sprksa in conjunction with the judicial/prosecutor selection legislation. Funding proposals for basic computerization needs have been developed and should be completed by July 1999. (OSCE,OHR, UN CICP, DOJ/CEELI) Following the completion of salary surveys in the Federation, legislation will be developed increasing and equalizing salaries in the Federation by August 1999. (OSCE,OHR, UN JSAP, DOJ/CEELI)

5. Police Reform

The police structure in each Entity differs, reflecting the

different governmental structures. The Federation Ministry of Internal Affairs is primarily responsible for the enforcement of exclusive jurisdiction Federation criminal laws and for dignitary protection. Each canton has an independent Ministry of Internal Affairs which is responsible for the local police. In the Republika Srpska, the Ministry of Interior is responsible for the police at both the Entity level and the local level.

IPTF is currently developing a proposal to restructure the Federation crime police, which is crucial for the investigation of crimes which are within the exclusive competence of the Federation. In addition, a proposal to restructure the Financial Police is being developed by CAFAO. As these restructuring initiatives involve Federation level crimes and the ability of the Federation to investigate corruption and financial crime cases, they are extremely important to anti-corruption enforcement efforts.

IPTF, of course, has the primary responsibility for police training and recently formed an Organized Crime, Drug and Public Order and Crisis Management Training Unit to provide specialist training and advice to police in these areas. IPTF has developed a two-part training program to address these areas. On the local level, IPTF will provide training for local trainers who in turn will train the police throughout the Entities. IPTF proposes the creation of police task forces at the Entity level to combat corruption as well as all types of organized crime such as fraud, illegal drugs, stolen vehicles and smuggling. IPTF will assist in the creation of the task forces with technical support as well as specialized training and practical advice in related topics. The concept envisions that the two task forces in each Entity will be structurally similar to foster greater inter-Entity cooperation. These police task forces will comprise the police component of the prosecutor-police task force concept developed by OHR. (See Section III, B. 8 – Anti-Corruption

Task Forces)

IPTF and OSCE are also cooperating in a joint “Rule of Law” training project on the new criminal codes in the Federation, particularly in regard to the standards and protections provided by the European Convention on Human Rights (ECHR).

IPTF, in cooperation with OSCE, has worked to design and implement this training program for local police and has established a program to monitor the training.

Despite the work which has been done, there continues to be little real cooperation between police and the prosecutors. Rarely do the police call or consult with prosecutors in the initial phases of investigations. A common concern of prosecutors is that the police are not responsive to their requests once they have received the cases. A common concern of police is that prosecutors do not appreciate or fully understand the criminal cases which are referred and therefore fail to initiate prosecution. While this failure of communication needs to be rectified across the entire police-prosecutor spectrum, it particularly needs to be addressed in complex crimes such as fraud and corruption. Cooperation is essential from the initial investigation through the trial. The collaborative working groups will be comprised of both police and prosecutors working together on corruption, fraud and economic crime cases from the initial investigation through the trial.

Action: Police training will continue on two levels – general training on corruption and fraud investigation at the local level by local trainers, and specialized training at the Entity task force level. (IPTF) OHR will support efforts to reform and restructure the Crime and Finance police to enable them to effectively carry out their duties with respect to investigating corruption, fraud and economic crime cases.

6. Judicial Training Centers

The formal education of those who wish to become judges and prosecutors is an important element in developing a professional, independent judiciary. In addition, the opportunity for existing judges and prosecutors to improve and refine their knowledge and skills is necessary if the judiciary is to maintain its professionalism and independence. This training is particularly crucial in BiH where the fundamental structure of government has changed and new laws, procedures and conventions have been adopted.

Current training is primarily sponsored by international organizations on an ad hoc basis with minimum coordination. It is necessary to increase the efficiency of the current training process and provide a permanent training structure which will ensure consistency and eliminate duplication. The creation of Judicial Training Centers in both Entities, with a joint supervisory board, will provide this structure.

The Centers will provide initial legal/judicial education courses for judges and prosecutors in BiH to prepare them for the responsibilities of working in the judiciary. Continuing training for present judges and prosecutors will be provided to allow those judges and prosecutors the opportunity to improve their knowledge and skills. The anti-corruption training programs discussed below will be integrated into the Training Centers as soon as they are operational. A draft law on the Centers, which has been prepared and is undergoing review by Council of Europe experts, will be ready for discussion by the International Community and local judicial and legal authorities by March 1999.

Action: The Council of Europe review of the draft proposals will be completed by February 1999, and the legislation creating the Centers adopted by July 1999. The Centers are scheduled to be operational by October 1999. (CoE, OSCE,UN JSAP, ABA/CEELI, OHR)

7. Anti – Corruption Laws

While the current Criminal Codes in both the Federation and the Republika Srpska contain a Chapter entitled "Criminal Offenses Against Official Duty or Other Responsible Duty" officials, neither Entity has modern, comprehensive anti-corruption laws. In discussions with local prosecutors, one of the first issues raised is the inadequacy of the current laws in their efforts to prosecute corruption cases and the adoption of such laws is a priority in both Entities.

A number of Central and Eastern European countries have recently developed, in addition to specific provisions in criminal codes, special anti-corruption legislation. One of the goals of enacting a special anti-corruption law is to raise political and public awareness of the fight against corruption. These special laws define corrupt behaviors, who is subject to corruption prohibitions, and the social areas particularly vulnerable to corruption.

In addition, consideration and adoption of laws in the following areas is necessary: ethics and public disclosure for public officials; campaign finance; obstruction of justice; witness protection; money laundering; government fraud and embezzlement; and expansion of the definition of "official" in bribery/corruption laws to include officials and managers in public or socially-owned enterprises. Adoption of these laws will not only provide the tools necessary to combat corruption and fraud, it will send a clear message that the governments of Bosnia and Herzegovina will not tolerate this illegal activity.

Action: A working group of prosecutors and judges from both Entities and experts from the Council of Europe will be formed to review existing European anti-corruption laws and develop draft laws for the Entities and the BiH level government. The working groups will be created in March 1999, with completion of the first draft laws scheduled for July 1999. (OHR, CoE, OSCE, UN CICP)

8. Anti-Corruption Task Forces

One of the inherent problems with the effective prosecution of corruption in any country is that it involves government officials. The prosecution of those officials, particularly by local prosecutors, is often difficult. The Anti-Fraud Unit has developed a proposal for the creation of Anti-Corruption Task Forces in both Entities. The Task Forces will be comprised of both police and prosecutors who will work together on corruption cases from the initiation of the investigation through the prosecution stage. This concept has proven successful in other European countries and initial discussions with officials of the Ministries of Justice and Interior/Internal Affairs have been positive.

It is envisioned that the Task Forces will have the authority to accept cases referred from local prosecutors and police, the authority to take over ongoing cases, as well as the authority to initiate their own investigations and prosecutions. Local police and prosecutors will retain jurisdiction to investigate and prosecute local corruption cases. This concept will require legislation to create the structure and jurisdiction of the Task Forces.

Action: Working groups will be established which will develop the Task Force concept and legislation for each Entity by May 1999. The Task Forces legislation is scheduled to be completed by July, 1999 and the Task Forces are scheduled to become operational by December 1999. (OHR, CoE, OSCE, IPTF, UN CICP, DOJ/CEELI)

9. Anti-Corruption Training

Anti-Corruption training is essential in both the public and private sectors. While police, prosecutors and judges need to be trained on the new laws and procedures, the private sector, such as the business community and civil institutions, need training as well. [See Chapter III, D, (Public Awareness)]

USAID, in an effort to address the need in both sectors, has provided training sessions for the officials in the bank supervision agencies of both Entities as well as to commercial banks on money laundering, white collar crime and ethics.

The Anti-Fraud Unit has developed an ongoing training program for the public sector in the anti-corruption area. The program includes an orientation phase, which involves a visit to Germany by representatives of the Entities Ministries of Justice and Interior to observe the successful German investigative and prosecution systems which utilize the anti-corruption task force concept. These trips include several days of instruction at the Bavarian Police School and visits with both German and Austrian prosecutors and courts. The OSCE Democratization Department sponsored the initial visit and the German government provided transportation to and from Germany, while logistical and training support in Germany was provided by the Bavarian Ministry of Interior and the General Prosecutor of Munich.

The purpose of these trips is to expose and familiarize the Ministry officials to the German task force model and particularly the concept of close police-prosecutor cooperation, which was not a traditional concept in the former Yugoslavia or in Bosnia and Herzegovina. The initial visit took place in December 1998 and further visits are scheduled.

The training program also involves specialized instruction and will be intensified once the Task Force personnel are selected. It will consist of concentrated training for the police and prosecutor members of the Task Forces, including working visits to anti-corruption units and task forces in other European countries. The specialized police training will be coordinated through the Organized Crime Unit of the IPTF. General anti-corruption training for local police and prosecutors is currently being organized and will be coordinated through the Organized Crime Unit of IPTF.

Action: The orientation training in Germany is ongoing . General training for local police and prosecutors will commence in June 1999 and the specialized training for the task force members will commence when the Task Force personnel are selected. (OHR, OSCE, IPTF, UN CICP, DOJ/CEELI)

C. Institutional Changes

1. Border Service

The international borders of BiH run for some 1660 kilometers through all types of terrain. It covers over 400 road crossings, hundreds of tracks and trails, and 11 ferry, 13 railway and 8 river crossings. The maintenance and control of an international border is a relatively new concept to BiH and, as a result, the country lacks a border service. Uncontrolled borders not only erode sovereignty, they also encourage criminal activities and undermine economic policy.

There are currently 40 operational border crossings operated by the Entity level customs administrations. Avoidance of these border crossings by smuggling operations is not difficult since there are so many unregulated crossing points which can be utilized. Control of the border would serve to funnel shipments of goods through the established border crossings, thereby increasing the effectiveness of the customs administration and revenue to the state level government.

The Madrid Peace Implementation Council (PIC) regarded the control of BiH borders as a matter of vital importance to the sovereignty of BiH and to BiH s ability to be a reliable partner for other European countries and the international community as a whole. The Madrid PIC strongly endorsed the High Representative s proposal to strengthen the policing and administration of BiH s international borders by the creation of a multi-ethnic BiH Border Service. The Border Service will be responsible for the integrity of BiH s borders and the manning of border posts. Trained to international standards,

they will be charged with ensuring legal entry to and exit from BiH, safeguarding BiH against the infiltration of crime, including drug trafficking and illegal immigration, upholding international commitments, such as sanctions, and assisting the customs authorities in their duties. Pending the creation of the Border Service, immediate steps need to be taken to close unregulated border crossing points.

Action: OHR is currently developing a draft Law on Border Service in coordination with the international community. Completion of the draft law is anticipated by April 1999. The Madrid PIC called for an initial contingent of the BiH Border Service to be operational by 1 October 1999. (OHR, SFOR, UNMIBH)

2. Parliamentary Commissions

Another structural reform crucial to anti-corruption efforts is the establishment of standing parliamentary commissions with budgetary oversight and monitoring responsibilities in each Entity and at the State level. These commissions would also have the authority to investigate and report on suspected corrupt activities in regard to the collection and expenditure of public funds. The parliaments are responsible to the voters for the proper expenditure and accounting of public funds. Without the ability to make inquiries into questionable expenditures or allegations of corruption, the parliaments cannot fully meet their responsibilities. The proceedings of these commissions ensure transparency and produce reports of government operations (Pillar III) which, in turn, results in greater public awareness (Pillar I).

Oversight commissions, when provided with proper authority, have proven very effective in uncovering corruption and in acting as a deterrent. The commissions must, however, have the power to subpoena witnesses and compel the production of documents associated with governmental expenditures. Failure to comply with a subpoena should result in the individual

and/or enterprise being disqualified from further government service or from receiving government contracts. Without these powers, the commissions effectiveness will be severely limited.

Action: OHR will submit letters to the respective parliaments in April 1999 calling for the creation of the commissions by June 1999, and offering technical advice and assistance of the International Community. (OHR)

3. Audit Function

The creation of a Supreme Audit Institution constitutes a significant institutional change in governmental structure. Public officials must be held accountable to the public for their performance and stewardship of public funds. Independent external and internal audits of government activities are essential elements within democratic systems. Without audits to systematically analyze the actions of previous budget periods, neither the public nor Parliamentarians can obtain any accurate information about the use of public funds. As a result, the concept of governmental transparency and accountability is undermined. To obtain these results, however, the audit reports generated by the Supreme Audit Institutions must be presented to the appropriate Parliamentary Commissions as well as to the press for dissemination of the information to the public.

One of the key reform elements of the World Bank s Public Finance Structural Adjustment Program is the formation of Supreme Audit Institutions (SAIs) in the Entities and for Joint Institutions of the State. The World Bank proposal calls for the establishment of SAIs within the Entity governments to perform compliance, certification and performance audits. At the State level, a State Audit Office would be established to provide a mechanism for the audit of the joint Institutions of the State and the funds provided by the Entities. The proposal also calls for strong auditing policies and institutions

within each Entity and at the State level.

In addition, the CAFAO program includes a project to introduce internal audit and management assurance mechanisms to the revenue collection authorities. This includes the drafting of internal audit procedures, the development of supporting structures and also the transfer of skills through the secondment of international specialists to work alongside local customs and tax personnel.

Transparency and audit requirements should also extend to public and socially owned enterprises such as the public telephone and electric enterprises, to ensure that the public is fully informed as to all aspects of public income and expenditures.

Action: Authorizing legislation for the Supreme Audit Institutions will be adopted in each Entity by June 1999 and the offices are scheduled to be fully operational by December 30, 1999. Internal audit functions will be established in each Ministry of Finance by July 1999. (U.S. Treasury; World Bank; USAID)

4. Transparency Offices

The need for transparency is discussed in the Strategic Pillar section as well as the Public Revenue section of this paper. The implementation of transparency requirements, however, will not happen automatically. A central office needs to be created at each level of government which will review existing and proposed laws, rules and procedures and develop necessary changes to ensure transparency. It is envisioned that the offices would work in close cooperation with the various Ombudsman s Offices in BiH. The offices would also receive and have the authority to investigate complaints from citizens who claim their right of access to public information or their right to view government proceedings has been denied or hindered. The transparency offices will issue periodic reports

to the parliament and public as to their findings and recommendations. The offices should be independent of the executive branch of government and responsible to the public and the parliaments.

Action: A working group will be created to draft legislation ensuring transparency in government operations and authorizing the creation of the transparency offices at the Entity and State levels by March 1999. Draft legislation will be completed by September 1999, and adopted by the parliaments by December 1999. The offices are scheduled to be operational by March 2000. (OHR)

5. Civil Service Reform

The public sector in BiH, as in most governments transitioning from socialist structures, has an imbalance of government workers in many areas. Under current budget levels, their wages are low as a result of the state of the economy and the lack of government revenue. That results in a situation ripe for corruption. Civil service reform is necessary to readjust the size of the workforce to a realistic number and to increase the salaries of those employees thereby reducing the temptation for corruption.

Adjustments in this area must be incremental as the current system acts, to some degree, as a type of social welfare. If a large number of government workers are discharged into an economy with no private sector job opportunities, the government merely shifts a payroll liability into a social welfare liability.

Action: Working groups will be established by July 1999. Efficiency and staffing studies need to be made in all ministries at the Entity level to determine the optimum number of employees for each ministry given their respective duties and responsibilities by September 1999. These studies and recommendations will be completed by January 2000. By March

2000, the Entity governments should adopt restructuring plans to revise the number of employees in each ministry and adopt realistic salary levels. (OHR)

6. Government Regulations

Socialist governments typically were overburdened with a plethora of regulations, many of which dealt with the various permissions, permits and certificates that individuals and enterprises needed to undertake personal or business projects. Obtaining the official "stamp" was, and in many instances still is, a requirement for almost any endeavor. In order to obtain even routine government permission without delays, underpaid government employees expected a "gift" and those requesting the permission accepted the payment of the "bribe" as an unavoidable part of the process. Unfortunately, the general attitude in BiH is not to condemn these public employees, but rather to envy them for having such good jobs.

In Bosnia and Herzegovina, individuals attempting to start new business enterprises accept and even factor into their estimated costs these side payments to government employees. They are motivated by the desire to avoid delays and the knowledge that others who pay the bribes will get priority service.

This cycle of institutional corruption must be broken. The cost to the economy includes not only the increased cost to those seeking the permits, but also the loss to the government where permits are issued with no fees going to the government. The greater cost, however, is the underlying economic distortion triggered by the bribes and the undermining of government credibility.

Unfortunately, recent history has demonstrated that governments in transition often create additional regulations in an attempt to "regulate" the economy into its new phase which exasperates the over-regulatory problem. In terms of

reform, government employees and officials have little interest in taking the initiative to eliminate burdensome requirements.

Deregulation and the expansion of markets are powerful tools for controlling corruption. The incentive of individuals and enterprises can be changed overnight by the removal of controls and the introduction of market-determined allocation systems. This can be achieved, in part, by the systematic reduction of regulations, licensing requirements and other barriers to entry for new firms, both foreign and domestic.

Action: A working group of international and local experts will be established to review and analyze the procedures of the various ministries and provide recommendations regarding government regulatory and permit procedures. The working groups will be established by June 1999, and their reports and recommendations will be completed by January 2000. Implementation of the recommendations will commence in July 2000. (OHR)

D. Public Awareness

1. OHR Conference on Corruption and Transparency

Early in 1999 High Representative Carlos Westendorp will host BiH officials at an Anti-Corruption/Transparency Conference in Sarajevo. State and Entity officials from all three branches of government will be invited to pledge their support to the anti-corruption/transparency strategy and their cooperation in implementing an effective anti-corruption program. The conference will mark the beginning of the first full year of a coordinated and comprehensive international anti-corruption strategy.

Media coverage will be coordinated to send a clear message to those involved in corruption, as well as the public in general, that corruption will not be tolerated in Bosnia and Herzegovina. A number of experienced domestic Non-Governmental

Organization (NGO) representatives will be invited to the Conference. These NGOs can provide valuable contributions as a link between the politicians and citizens for the purpose of education and information dissemination (See: Civil Society and Raising Public Awareness).

Action: The conference, scheduled for April 1999, will be coordinated by OHR.

2. Government Officials and Employees

In order for the anti-corruption strategy to be successful, it must have the support and understanding of all citizens, including government officials and employees. They are the individuals who often are in the best position to observe and report corrupt activities. Seminars will be presented to government workers in both Entities on corruption and its cost to society. After adoption, Codes of Ethics for government officials and employees will be analyzed and discussed in these seminars. Different models of approach to combating corruption on all levels of government will be presented with emphasis on the tools needed for immediate action on the local and regional levels of government.

Action: These seminars are scheduled to commence in July 1999. The seminars, conducted by OSCE, will assist governmental workers (Cantonal and Municipal) in developing a Code of Ethics and a deeper understanding of the economic and social costs of corruption and will also facilitate the development of government structures or lines of communication which deter corruption. CAFAO also has plans for seminars in this area. (OSCE, CAFAO)

3. Civil Society

Civil society includes those organizations, structures and networks which are separate from government but which interact with it and are in a position to exert influence. Civil society includes, for example, professional associations such

as the National Bar Association, trade unions, chambers of commerce, non-governmental organizations and the media. Civil society in BiH needs further support and development to become an effective partner in the fight against fraud and corruption.

The support of civil society for any anti-corruption program is crucial to the success of that effort. The members of civil society must understand the consequences to democratic institutions and the economy if corruption is allowed to flourish. An informed and educated civil society must take an active role in anti-corruption efforts. A partnership should be created between the government and civil society in the battle against corruption.

Domestic non-governmental organizations (NGOs) and other members of civil society will be urged to share information and knowledge through public debates on the issues. A dialogue must start between citizens and local authorities and representatives of NGOs and other civil institutions will be encouraged to participate as experts and panelists at community and other meetings.

The media, which is perhaps the most visual and potentially the most effective segment of civil society, is crucial to the success of an anti-corruption program. Violation of the freedom of the press guarantees found in BiH and Entity Constitutions, as well as the European Convention on Humans Rights, cannot be tolerated. Responsible investigative reporting must be encouraged, free of governmental or political interference. The OSCE Democratization program encourages national NGOs to: adopt a stronger advocate role, demand additional accountability from the ruling parties and hold politicians responsible for the current situations.

Action: Seminars will be presented to members of civil society in both Entities beginning in July 1999. (OSCE,USAID, SOROS Foundation)

4. Raising Public Awareness

In addition to the support of government employees and civil institutions, strong public support is necessary to develop a sustainable anti-corruption program. The perception that corruption is inevitable and victimless must be eradicated. This can be accomplished through: a general media campaign on the methods and effects of corruption; specific training directed to members of the general public and citizens groups; an anti-corruption education package for presentation in the schools; dissemination of anti-corruption information through OSCE s Democracy Centers/Reading Rooms and Political Resource Centers (PRCs); and organization of local round table discussions and community facilitation meetings on corruption which will include the role and responsibility of the individual citizens. Only when citizens recognize corruption and are aware of its effects, will they be able to make the correct choices at the ballot box.

Action: This program is scheduled to commence in early 1999 with the OHR conference on corruption and transparency, and continue on through 2000. (OHR, OSCE)

E. Privatization

Privatization is a high priority in the reform of the BiH economy, not only to provide the foundation for economic growth, but also because, in the long run, it should decrease corruption. Along with the traditional privatization objectives, the program in BiH has two additional objectives: the clarification of ownership of productive assets; and the elimination of public internal debts. Due to the second objective, both Entities have chosen the “voucher” privatization model. The Entities have adopted their individual privatization legislation and implementation is scheduled to commence shortly.

Since a successful privatization program is central to the

development of a robust free market economy, it has been assigned a separate sector in the Anti-Corruption strategy. All four strategic pillars apply to the privatization sector. Steps can be taken in the development of privatization procedures to reduce the opportunity for corrupt and fraudulent activities. Transparency in the privatization process is necessary to ensure the procedure is honest and unbiased. Public education and awareness of the privatization process is necessary to ensure that all eligible claimants are aware of their rights and to ensure pubic confidence in the process.

A successful privatization program will reduce the power and discretion of public managers and bureaucrats as well as political parties, while increasing competition and transparency. However, preventing corruption in the privatization process is a difficult task, as noted by the World Bank:[14]

> ***In the short run, however, the complex negotiations required for privatization – usually in a situation of shifting policies and regulations – create temptation and opportunity. Weak institutions are unlikely to resist temptation. If corruption becomes evident, a negative image of privatization builds in the public s eye – even though the transactions themselves still make good economic and financial sense.***

Privatization programs offer many opportunities for fraud and corruption and the programs in BiH are no exception. It is important that political parties, illegal power structures and parallel institutions be restricted from obtaining and using vouchers to retain or acquire control of privatized enterprises. Otherwise they will continue their disruptive influence in the BiH economy. Some type of restriction, therefore, on the involvement of political parties and their affiliates in the privatization process is needed. Also needed

are: tougher and clear procurements regulations; independent auditors who will follow up on procurement; and anti-monopoly/pro-competition laws with substantial economic and punitive penalties. The potential for “asset stripping” must also be recognized and where there is reason to suspect the improper disposition of assets, the opening balance sheets must be carefully scrutinized.

Particular scrutiny must be paid to tender/direct negotiation privatization transactions, which are the least transparent methods of privatization, and to illegal

co-capitalization and joint ventures where the clear intention is to reduce the public s ownership share. A strong securities commission with independent commissioners is needed to ensure that the conversion to equity based companies is conducted in a legal, transparent manner.

The Framework Privatization Law imposed by the High Representative in July of 1998 requires that the Entities adopt legislation which ensures maximum transparency and public accountability in the privatization process and which is in conformity with the Dayton Accords. The Privatization Monitoring Commission, created by the High Representative, provides safeguards to ensure that the principles laid down in Dayton and the Framework Law are effectively applied by the entity and local level privatization agencies.

The goal of the Anti-Fraud Unit is to reduce the opportunity for corruption in the privatization process while not impeding the progress of the overall program. The Unit will also work with the Privatization Monitoring Commission to provide assistance and support as necessary.

Action: A supervisory board for the privatization agencies needs to be established by March 1999. The Entities also need to adopt, by March 1999, clear procurement regulations which can be verified by independent auditors. Legislation which

restricts the involvement of political parties and their affiliates in the privatization process needs to be enacted by the Entities by April 1999. A Securities Commission in the Federation must be established and operational by March 1999 and its counterpart in the Republika Srpska by May 1999. The Entities need to enact anti-monopoly and pro-competition legislation by June of 1999.

(USAID, OHR, World Bank, IMF)

F. International Cooperation

Bosnia and Herzegovina should take advantage of the experience of other countries and that of international organizations as corruption and organized crime are international in scope. Cooperation should be developed with other countries by way of bilateral agreements and by taking full advantage of the relevant international treaties, not only to deter fraud and corruption but to encourage international economic investment. BiH should strengthen formal, and where appropriate and legally possible, informal international cooperation at the investigative, prosecutorial and operational levels. This can lead to: the exchange of manuals explaining the procedures followed by other countries; the designation of “contact points” to expedite requests for information or legal assistance; the formation of joint international task forces; and the identification of “best practices” in investigative techniques; the sharing of advanced investigative technology; and the development of adequate safeguards in the international exchange of sensitive information.

BiH should immediately take steps to become aware of relevant international conventions and programs which will enhance their anti-corruption efforts. The legal framework of BiH and the Entities should be strengthened to reflect the 20 Guiding Principals Against Corruption adopted by the Committee of Ministers of the Council of Europe (6 November 1997). The Council of Europe Criminal Law Convention on Corruption (4

November 1998), the 1957 European Convention on Extradition, the 1959 European Convention on Mutual Assistance in Criminal Matters and the 1990 Convention on Laundering, Search, Seizure and Confiscation on the Proceeds from Crime also need to be considered.

Action: By March 1999 OHR will coordinate with the Entity and State level governments to take the necessary steps to ratify relevant international conventions in order to participate in and benefit from international cooperation and assistance in the anti-corruption area.

Conclusion

The challenge to the international community and to the government and citizens of Bosnia and Herzegovina is clear – corruption must be stopped.

The cost of corruption is directly felt by the citizens of BiH but is more subtle in the undermining of efforts to establish a market economy and further develop a democratic government.

The Anti-Corruption Strategy is ambitious, but once implemented, it will ensure that the necessary anti-corruption infra-structure is established and that government officials, civil society and the public are aware of the danger corruption poses to their country. The ultimate success of the battle against corruption will be determined by the political will of the citizens of Bosnia and Herzegovina and the expression of that will in the election of their leaders.

Chart: Anti-Corruption Strategy–Allocation of Efforts

Institutional Changes

Public Revenue

Public Revenue I

Rule of Law

Rule of Law I

AFD Acronyms and Abbreviations