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LEGAL AND POLITICAL AFFAIRS COMMITTEE

REPORT^{*}

COOPERATION AMONG THE PABSEC MEMBER
COUNTRIES IN STRENGTHENING THE RULE OF LAW

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I. INTRODUCTION

1. At its Sixteenth Meeting of the Committee in Kyiv on 11-12 October 2000, during the debates on corruption in the Black Sea countries special emphasis was placed upon the issue of strengthening the rule of law. It was stressed that consolidation of democracy and the rule of law as well as building of just and fair civil society facilitate the ongoing process of political and economic reforms in the Black Sea countries. Subsequent to this decision, PABSEC Legal and Political Affairs Committee takes up the subject on “Cooperation among the PABSEC Member Countries in Strengthening the Rule of Law”.
2. The issue of the rule of law as a main pillar within the framework of the sustainable democratic development and economic cooperation has always been among the top priorities on the agenda of the Black Sea economic cooperation. The main idea of the “new partnership between the Black Sea countries inspired by the values of democracy, the rule of law and respect of human rights” enshrined in the Bosphorus Statement guides the whole BSEC process permanently supported by the national parliaments and the Parliamentary Assembly.
3. The present report stresses the necessity of strengthening the rule of law in the countries of the Black Sea region within the framework of the process of consolidating democracy and elaboration of future strategies in order to make the ongoing process consistent and coordinated. Over the last decade the rule of law, human rights and other basic democratic principles have gained increased attention throughout the world policy. Within this context, discussion of the essential elements of democratic society that give added institutional and political dimension to the regional economic cooperation acquires significant importance. The report also highlights practical measures and priorities for consolidating democracy and institutional climate towards good governance and strengthening of the rule of law.
4. Although the contributions for the Report and Recommendation have been forwarded only from the national delegations Greece, Turkey and Ukraine, many issues raised in the report are taken from the interventions by the Heads of the national delegations made during the general debate on “consolidation of democracy and the rule of law”, which took place within the framework of the Sixteenth General Assembly in Yerevan on 29 November 2000. In addition, the reference materials were obtained by the PABSEC International Secretariat from the official internet sites of the related international organisations.

II. STRENGTHENING THE RULE OF LAW CONSOLIDATES DEMOCRATIC REFORM AND UNDERPINS THE PROCESS OF THE BLACK SEA ECONOMIC COOPERATION

5. The principle of supremacy of law is the core of democratic system founded upon fairness and trust within a society and ensures that the law rules and every individual citizen obeys and respects it. The rule of law implies a moral and ethical commitment for strict account to the people and to the law with equal and uniform application of rules and norms through transparency, accountability and impartial judiciary regardless of any influence by personalities or personal

interests. When the law rules the government is bound by the same principles and norms as the society and the legal system treats fairly and equally all individuals before the law.

6. The rule of law is a fundamental principle of any democratic system seeking to foster and promote rights, whether civil, political, economic, social or cultural. Strengthening of the rule of law in its turn is a part of a broad process in which a series of factors come together preparing and consolidating a movement towards democracy. Universal democratic principles are very much interdependent and indivisible and application of each one of them involves one or more others to a certain degree. These principles based upon an efficient body of rules underpin the organisation of a state, guarantee enjoyment of rights and fundamental freedoms and promote strong civil society. The pace of gradual consolidation of democratic process and its assimilation by the countries depend primarily on the ongoing adaptation of the rules to each country's history, cultures, socio-economic context and particular ways of thinking.
7. A truly democratic system enables human rights to flourish in a climate of respect and recognition of the rule of law. This can only be attained through legitimacy, legality and the good governance. A sound legal framework comprising legally binding rules, appropriate legal process through which such rules are made and enforced in practice, well-functioning transparent and accountable public institutions staffed by high professional individuals bound by and adhere to the regulations without arbitrariness or corruption are prerequisites necessary for the rule of law. On the other hand, a predictable and efficient legal system with fair, transparent, and effective judicial institutions is essential for protection of citizens against lawless acts of organisations or individuals. At the same time, proper functioning of the legal framework depends on understanding by public at large of the importance of the rule of law and their reliance on it, instead of interpersonal relations, political or social influence, nepotism or corruption. It is equally important that the rules are clearly formulated and, when necessary, are complemented by more detailed regulations drafted and applied by capable and efficient regulatory bodies.
8. The rule of law is of fundamental importance for the economic cooperation and interaction as the impact of the rule of law falls beyond the sphere of law and politics. The rule of law fulfils crucial economic functions constituting a backbone for the fully-fledged market economy. Strengthening of the rule of law, especially, in the areas like commerce, customs, taxation, border crossing, finances provide fair competition conditions and establish confidence attracting more businessmen and investors both foreign and domestic. The faster and more sustainable this process, the higher the chances are for broader regional economic stability and mutually beneficial economic growth. The Assembly have analysed these problems separately at its previous meetings and came up with the Reports and Recommendations* on improvement of legislative framework in the related fields and enhancement of all aspects of economic cooperation in the Black Sea region.

* Reports and Recommendation 1/1994 and Recommendation 20/1997 on the Improvement of Customs Regulations among the BSEC Member Countries; Report and Recommendation 9/1995 on Development of Cooperation in Banking and Finance among the BSEC Member Countries; Report and Recommendation 15/1996 on Cooperation among the PABSEC Member Countries in Combating Organised Crime; Report and Recommendation 16/1996 on Development of Cooperation

9. A government committed to the rule of law and other norms characteristic of democratic society serve as a force for stability. In its turn, stability is a prerequisite for emergence of prospering free market democracies and economic and political stability. A major impediment to the democratic reforms and establishment of the rule of law are social unrest, ethnic tensions or conflicts. It is obvious that unstable political climate hinders to a greater extent promotion of economic and political interaction between and among the countries and hampers the progress of the regional economic cooperation in general. Prevailing problems related to the refugees and displaced persons as well as escalating difficulties in law-enforcement on the territories trapped by conflicts complicate the establishment of supremacy of law. Within this context, conflict resolution and consolidation of peace and stability becomes top priority for the democratic governments. For the Black Sea countries with prevailing conflict situations, it is extremely important to develop, further formulate and implement necessary stability policies, with a view of respect of basic democratic principles and the rule of law as key factors in stability within the democratic development.
10. In the period of past few years the Black Sea countries have made appreciable progress in the process of promoting democratisation and the rule of law. The countries took important steps in this direction and, indeed, in most of these countries, the formal procedures of democracy have settled in place. The democratic values, although stronger in some countries and more vulnerable in the others, continue to take root and get well established. The scope for building democratic institution varies in pace and manner from country to country depending on the ability and capacity of the legal system to uphold democracy and the rule of law, assure basic rights and freedoms and to secure impartial justice. Along with a viable legal and regulatory framework being developed and a stronger civil society being emerged, the countries still need to carry out a considerable work to achieve fully democratic governance. The formidable challenges at present, especially for the countries in transition lie in support for broader democratic reforms including legal, regulatory and judicial ones in order to cease visible results in improvement of quality of life of the peoples.
11. The Black Sea countries have come a long way since the democratic reforms begun. Yet the comprehensive measures are to be taken towards transformation into the market-led democracies with vibrant economies, open political systems, strong civil society and efficient institutional infrastructure. Without the rule of law, a state lacks the legal framework necessary for civil society to flourish, adequate accountability of the executive and legislative branches of government and necessary legal foundations for free and fair electoral or political processes. In the countries with weak or nascent democratic traditions, existing laws are not equitable or equitably applied; judicial independence is compromised; and institutions are to be developed to the capacity of administering existing laws. Weak legal institutions endanger democratic reforms and sustainable

in the Field of Trade and Business among the BSEC Member Countries; Report and Recommendation 23/1997 on Harmonisation of Foreign Trade Regimes in the BSEC Participating States; Report and Recommendation 38/1999 on Promotion and Protection of the Investments in the Black Sea Region; Report and Recommendation 43/2000 on Legislative Framework for Cooperation among the Law-enforcing, Customs and Migration Authorities; Report and Recommendation 46/2000 on Legislative Framework for Combating Corruption.

development. It is necessary that efforts are concerted for mobilising support to ongoing legal reforms and improvement of the administration of justice.

12. Promotion and protection of fundamental freedoms, separation and independence of the legislative, judicial and executive powers, their effective exercise, proper institutional arrangements at national, regional and local levels, administrative decentralisation, political and institutional pluralism, free and independent media, transparency and good governance are the cornerstones for the rule of law and democratic development. The attainment of these objectives and achieving of concrete results are asymmetric in the Black Sea region due to the diversity of socio-economic conditions and policies. It could be noted that while some countries are working for perfecting consolidation of democracy the others are striving to outline and implement of democratic reforms. Nevertheless, with the passage of time the disparity existing between these groups are narrowing as the countries meet the challenges of the 21st century and develop new approaches and programmes tailored to their particular situations. Closer and constructive partnership as well as multifaceted cooperation between the individual countries and rapprochement within the region also contribute to this process.
13. The main tasks prevailing on the agendas in the countries, especially, those in transition are democratic development, political and economic stability and sustained reform. Although the reforms share common inspiration and pursue identical objectives, their sequence, content and pace are determined by particular circumstances. The priority tasks for *Albania* are institutionalisation of key democratic concepts: the rule of law, independence of the judiciary, executive oversight by the parliament, independence of the media and decentralised governance; for *Armenia* – transition to a democratic political order with efficient judiciary and free market economy; *Azerbaijan* targets macroeconomic stability, political reforms and development of strong civil society backed by responsive, transparent, and accountable democratic governance. *Bulgaria* pursues legislative, judicial and administrative reforms with due regard to participation in the European institutions; *Georgia* focuses on legal and regulatory reform, economic and energy sector restructuring, fight against corruption, institutional, legal and judicial reform; *Greece*, as a fully-fledged member of the European Union is bound by the European legal norms and instruments providing full respect to democratic principles and human rights; *Moldova* places particular attention to economic and legal reforms, local public administration and independent media. *Romania* improves effectiveness of the executive and legislative branches and promotes judicial reforms; *Russia* moves ahead with comprehensive economic reforms, takes active and overall legislative and administrative measures in fight against corruption and organised crime; *Turkey* pays great attention to the consolidation of democracy, the rule of law and good governance, modifications are done in public service and administration areas; *Ukraine* expands the efforts for democratic development and for shaping more secure and stable region within the context of integration into the European and global community.

The role of the national parliaments

14. The principle of the rule of law is best served by a representative government drawing its authority from the sovereignty of the people. The national parliaments, in this respect, play a major role. Being a country's supreme political authority

and instance of control, parliament provides efficient public supervision and handles the task to streamline and simplify the rules, laws, regulations and administrative procedures. Parliaments have the capacity to launch and strengthen democratic reforms, safeguard the civil liberties, develop strong pluralist civil societies, promote and strengthen the rule of law, enhance public scrutiny, facilitate sustainable social and human development and give full effect to human rights and fundamental freedoms.

15. A key determinant for successful democratic consolidation and the rule of law is the ability of democratically elected governments to provide good governance. Good governance, therefore, remains implicit in a competent and effective political and institutional environment respecting democratic principles and, at the same time, facilitates implementation and supervision of policies addressing the needs of the people. Political representatives have a vital role in shaping realistic priorities for good governance and public sector reform in given particular national situations. Parliament carries out its legislative, oversight and representative functions in ways that respect the principles of good governance, particularly, political openness, political participation and political accountability. Parliamentarians, in their turn demand a well-performing public sector to be transparent and respect the rule of law and are responsible for making public sector reform work well for people.
16. Parliaments, because of their permanent ties with the public and the civil society as well as their special responsibility for advancing efforts for greater openness, expanding public participation and more accountability from government, pursue the commitment to further open state responsiveness to the public and secure the respect and supremacy of the law.
17. The main obstacle to good governance is abuse of power or impropriety in the decision-making process, i.e. corruption. In a climate of corruption the criteria governing the choice of development are not directly related to the objectives or the public interest but to vested subjective interests. An underdeveloped civil service opens the way for corruption and organised crime. This leads to decline in the quality of the performance and destroys all notions of transparency, equity and the rule of law. Corruption, in its turn, results in an economic system favouring short-term gains, arbitrary decisions and private interests. It becomes a barrier to democratic reforms and the opening-up and liberalisation of the economy since it serves interests opposed to the abolition of monopolies*. In the fight against corruption, the role of non-governmental organisations and independent mass media is crucial in mobilising public concern about corruption, and to press government to take corrective action.
18. In this respect, the national parliaments have primary task to enact necessary laws and regulations, administrative procedures and to check compatibility between different normative documents for reducing incentives for corruption, as well as to provide adequate and precise penalty sanctions against those who are engaged in corruption. In addition, the political representatives have to secure transparency and respect to the rule of law, along with the prudence, credibility, integrity and coherence of the public sector.

* See the Report and Recommendation 46/2000 on Legislative Framework for Combating Corruption

19. Given the role of the legislative branch in promoting and strengthening the rule of law, it is very important that the parliamentary system and regional cooperation between parliaments is very much supported. It makes national parliaments more effective and creates strong ties between parliaments and parliamentarians in the region. In this respect, the role of the parliamentary assemblies and participation of parliamentarians in international parliamentary gatherings raise as an effective mechanism for boosting common goals and objectives towards establishment of a truly democratic societies. Bilateral relations and interaction between the PABSEC member parliaments as well as partnership with the internationally renown parliamentary organisations like European Parliament, NATO PA, OSCE PA, PACE, IPU, WEU Assembly, etc. have immense contribution for promotion joint policies for improvement of socio-economic situation and enforcement of democratic principles.

The institutional and administrative reforms

20. Weak institutional capacity, a lack of knowledge and understanding by citizens of the political process hinders the process of political reform and establishment of truly democratic society. Strengthening of the civil society is the hallmark of a democratic reform playing a key role in establishment and promotion of the rule of law. Civil society and the non-governmental organisations are significant actors in the process of political reform and development of pluralist democratic procedures and practices. The civil society efforts complement activities to strengthen the rule of law, to upgrade law enforcement bodies and to regulate financial institutions. To this end, work on economic restructuring and policy reforms, public administration reform, local government development and strengthening civil society may serve as a main target.

21. Key areas of institutional reforms directly related to the democratisation and the rule of law fall upon legislative and judicial sphere. The basic among these measures is the *constitutional reform* aiming at ensuring that a state's foundations and structures respect human rights, fundamental freedoms, the rule of law and other democratic principles. Constitution regulates fundamental relationships within society and rights of individuals in relation with the government. In the past years almost all the Black Sea countries completed the process of adopting or adapting their constitutions with the requirements of the internationally recognised norms. The process of enactment of constitution and the laws dealing with judiciary are important steps towards promoting the rule of law and establishment societies governed by law in which legal institutions are respected and trusted by the public at large. *Judicial reform* and development of impartial, efficient, and accountable judiciary eliminates citizens' lack of faith in judicial procedure. Judicial reform has to be focused on judicial independence (including proper criteria for the selection and removal of judges, pay scales, training, and judicial ethics), improved court administration and case-flow management, procedural reform and better access to the justice. Competent, honest, ethical, non-corrupt judges are key players in raising public confidence and success of the reform process. In this respect, it is rather important to carry out qualification and re-qualification examinations for the judges and to hold a transparent judicial appointment process. Judges must be independent of all forms of external non-judicial influence, which might affect their decision-making process.

Administrative decentralisation as well as creation of new mechanisms and modalities for increased citizens' participation is another measure for facilitating democratic development. These reforms are crucial in restoring citizens' responsibility and fundamental manifestation of the rule of law.

22. For the past years the BSEC countries have made substantial progress with reforms involving radical reorganisation of the means of exercising political power and relations between government and citizens. These reforms have completely changed the institutional set-up and political practice by increasing public participation in the management of public affairs and the exercise of fundamental civil liberties. The measures were taken towards establishment of coherent legal framework supportive of democratic principles. A great number of important new laws and regulations have been adopted. The wave of recent free and fair elections in the Black Sea countries within the framework of the newly passed election laws may serve as a good example for the reform for pluralistic democracy and the rule of law.
23. It is noteworthy, that this progress has in many cases been achieved at a time of social and economic difficulty but the authorities were putting efforts to make public understand and accept the principles of democracy, transparency, predictability, accountability, fairness and legal certainty. Internalisation of these concepts by both the public and the state institutions is the necessary precondition for developing trust between the state and its people that cements foundation for just and fair society.

III. COOPERATION AND PARTNERSHIP IN STEPPING UP SUPPORT FOR CONSOLIDATING THE RULE OF LAW

24. The cooperation and partnership in the name of consolidating democracy and the rule of law takes higher place within the scope of the contemporary political, economic and security developments. The rule of law as a principle securing justice against repression, elevating equality above dominion, and protecting weak against the unjust claims of the strong secures basic principles of democracy and establishment of free and fair societies. In this regard, the countries have to pay more attention to strengthening the rule of law both collectively and individually and pursue the respect for the rule of law as a basic statehood and neighbourhood value.
25. Although the success of democratic development depends on the policies undertaken within the national authorities, bilateral and multilateral cooperation also plays important supportive role. In the world of globalisation, more and more universal international and global principles take decisive influence. The body of legal rules and norms applying between and within the states include broad measures for strengthening civil society, respect of human rights, fundamental freedoms and supremacy of law. Although the states are sovereign they have to take into account the global rules and international standards binding them with their responsibilities within certain regional or global frameworks. Just as local norms and customs embedded in the national constitutions channel the action of a state within its own borders, so the global rules, norms and standards are imperative for the states. Thus, though each country is free to choose the political and economic model for its society, as actors in the international politics, these

models must be consistent with the universal principles of democracy and the rule of law and must comply with the relevant international and regional conventions and legal acts.

26. Within this context, it should be mentioned that the *First World Forum on Democracy* took place in Warsaw, Poland on June 25-27, 2000. It was inspired by a shared viewpoint that the civil society is essential element in achieving and maintaining the extraordinary democratic gains. The World Forum gathered the leaders and activists, academic experts, leaders of civic and religious organisations, representatives of the business community, labour, NGOs and the media from democratic countries and democracies in transition to discuss the continued advancement of democratic governance and values throughout the world. The Forum discussed the problems of democracy, obligation and right of states to respond to threats to democracy, the effects of culture and economic conditions on democratic development and the impact of globalisation on democracy and issued recommendations to the meeting of the ministers held parallel to the Forum. The interaction between the World Forum and the ministerial meeting resulted in the highest-level international dialogue ever undertaken between governments and the non-governmental sector.
27. The prospect of the European Union's enlargement brings new dynamism to the process of European integration. The strategy of expanding EU towards the east embracing also some of the PABSEC member countries is an important process extending stability, economic prosperity and security to the adjacent regions in the name of wider European cooperation and integration. This process also entails special assistance programmes for the less developed countries to mobilise their commitments towards broader democracy and the rule of law guided by the transparent institutionalised system. Many undertakings and joint projects are launched in this respect. As an example, the European Union through its PHARE and TACIS programmes promotes and facilitates democratic processes in the East European and CIS countries including the majority of PABSEC member states.
28. Specific events within the European Union framework, aimed at promoting dialogue and transparency deserve to be noted. *The First Annual EU Human Rights Discussion Forum* (Brussels, December 1999), and the *Conference on "The European Union and the central role of human rights and democratic principles in relation with third countries"* (Venice, May 2000). These meetings provided fruitful dialogue on the improvement of the EU human rights policy. The Forum underlined the significance of respect of human rights and the role played by civil society organisations in this respect; the need for greater networking and coordination among the NGOs and a more structured dialogue with the EU institutions. As for the Conference, it focused on strengthening the ties between policy-thinkers and public opinion in the area of human rights and to reinforce the integration of human rights and democratic principles in the EU's relations with third countries. On the other hand, joint EU-CE multilateral *Conference on "Rule of law in democratic society"* pointed out the importance of the rule of law to the functioning of a democratic society. Particular stress was placed upon the independent status of the judiciary and judicial decision-making, access to court including legal aid and advice, interference with judicial decisions and their execution.

29. Various regional and sub-regional initiatives become starting point leading to the significant achievement in partnership and cooperation in the European space in promoting the basic democratic principles. Closer ties among the countries encourage many undertakings and joint projects in various fields of life for the benefit of particular countries and the region as a whole. Strengthening interaction with European regional and sub-regional organisations and initiatives such as South East European Cooperative Initiative (SECI), the Central European Initiative (CEI), Royaumont Process and the South Eastern Europe Cooperative Process (SEECF), embracing the six PABSEC member countries located in the central and south-eastern Europe, acquires more significance. At the same time, the Inter-parliamentary Assembly of Commonwealth of Independent States - uniting in its membership six newly independent PABSEC member states - facilitates solution of many common problems.
30. Within this context, it is noteworthy to mention the international community's latest initiative, the Stability Pact for Southeast Europe, adopted 10 June 1999 in Cologne, relying on regional cooperation as one of the most important instruments for bringing lasting peace and stability with special reference to the democratisation and the rule of law. The Working Table I within the framework of the Stability Pact covers the issue related to good governance, democratisation, human rights, etc. PABSEC through the members of the Assembly actively participates in all gatherings of the Working Table on behalf of the Organisation of the BSEC bringing its contribution to a constructive regional dialogue in promoting democracy, economic development, peace and stability.
31. International standards and universal norms are usually enforced through self-compliance by the states, international institutions and civil society organisations. Many international organisations or state institutions carry out oversight and control on respecting international legal commitments. At the same time, national laws are drafted in conformity and compliance with international standards, which in its turn derive from state practices and experiences. A number of international agreements, conventions, resolutions, recommendations and other similar documents worked out by many renowned international organisations play significant role in consolidating democracy and the rule of law internationally as well as modernising and updating domestic legal systems.

IV. CONCLUDING REMARKS

32. Democratisation and establishment of rule of law is a long and complex process involving all forces in the society. Human rights, the rule of law, good governance and other basic democratic principles are now areas of common interest and fundamental elements of institutional and administrative reform process.
33. As it was stressed in the previous chapters of the Report, in spite of the measures undertaken by the countries, there is still much work to be done in order to establish open and accountable governance practices, enforcement of anti-corruption laws and transparent decision-making; to safeguard integrity among justice, security and law-enforcement officials; to promote openness and accountability in the public sector; to strengthen institutions that ensure public and private accountability including strong and impartial judiciaries, as well as a free and open press.

34. The process of democratic reforms cannot be properly launched or sustained without taking account of a country's specific social, economic, political and cultural circumstances. Each country is a different case and pursues democratisation in its own way. Nevertheless, commitment of the countries towards democracy should be based upon the shared, practical and operational understanding of such concepts as human rights, democracy, the rule of law and good governance. This understanding will help to deepen and strengthen the current partnership and to mobilise mutual support in the wider cooperation and integration context.
35. In its turn, respect for universal human rights, democratic principles and the rule of law underpin bilateral and multilateral relations between the states and is a prerequisite for sustainable economic and social development. Aspiration of the Black Sea countries towards peace, prosperity and stability in the Black Sea region must tie in with a coherent strategy of partnership and coordination of actions in pursuit of a common objective towards strengthening a culture of democracy and institutional climate more conducive to good governance and supremacy of law.
36. With the start of the new millennium, the international community have placed additional attention to the global efforts for encouraging and strengthening the democratic processes, including safe-guarding the rule of law, through multiple international programmes and the assistance projects designed for concrete regions and individual countries in order to make the world a better place for the peoples.
37. Parliaments and parliamentarians of the Black Sea countries, together with their counterparts internationally, have particular role in meeting the challenges of the 21st century and have to bare special responsibility in the process of pursuing better governance, greater openness, more public participation, more accountability and strengthening the rule of law for the benefit of closer regional cooperation and the integration into the European and global community.