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LEGAL AND POLITICAL AFFAIRS COMMITTEE

REPORT^{*}

COOPERATION AMONG THE PABSEC MEMBER COUNTRIES IN STRENGTHENING GOOD GOVERNANCE

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I. INTRODUCTION

1. At its Nineteenth Meeting of the Committee in Bucharest on 10 April 2002, the decision was taken to place on the Agenda of the Twentieth Meeting of the Committee the subject on “Cooperation among the PABSEC Member Countries in Strengthening Good Governance”. Upon the decision of the Nineteenth General Assembly in Tbilisi in June 2002 the agenda of the Twentieth Meeting of the Committee was changed and the discussions on good governance were postponed until the next meeting in April 2003. Subsequent to these decisions, the Twenty First Meeting of the PABSEC Legal and Political Affairs Committee takes up the subject on “Cooperation among the PABSEC Member Countries in Strengthening the Good Governance”.
2. Development has long been seen as a function of economics but, lately, social and political disciplines have started to play increasingly important role in what is called “sustainable development”. For development to be truly sustained it has to be a comprehensive process in which all dimensions fully participate. The rule of law and good governance, in particular, as formal instrument of orderly change in society play pivotal role in this process attracting increased attention throughout the world policy for the past years. Proper functioning of normal life in a free society is at the same time key element for success of a market economy and economic development. Within this context, discussion of the essential element of democratic society such as strengthening of good and effective governance adds political dimension to the regional economic cooperation.
3. The interest by the Assembly in the problem of good governance arose from its concern for the effectiveness of the development process it supports, thus encouraging formation of the rules and institutions, which provide predictable and transparent framework for cooperation and development. The Committee extends special thanks to Mr. Ahmet Iyimaya, former member of the Turkish PABSEC delegation, who was appointed the Rapporteur on the subject in Bucharest and who submitted a paper titled “Challenges of the good governance in 21st century”, which lays as basis for the present Report.
4. The issue of good governance is seen in this Report through the prism of the common problems experienced in the BSEC member countries. It is stressed that good governance is central in creating and sustaining an environment, which fosters strong and equitable development and is an essential complement to sound economic policies. Efficient and accountable management by the public sector and a predictable and transparent policy framework are critical to the efficient functioning of markets and economic development in broader sense. Good governance is synonymous with sound development management. The manner in which power is exercised in a county either promotes or erodes economic and social development.

II. COOPERATION AMONG THE PABSEC MEMBER COUNTRIES IN STRENGTHENING GOOD GOVERNANCE

5. Governance as a process of decision-making and their implementation can be used in several contexts such as national, local, corporate, international, etc. Governance could be appraised focusing on the formal and informal actors involved in the process of decision-making and decision-implementing on the basis of the manner in which power is exercised. Symptoms of poor governance include weak institutions, lack of an adequate legal framework, weak accounting or auditing systems, uncertain and variable policy frameworks, excessive rules and regulations, closed and non-transparent decision-making, which increases risks of corruption and has many other negative consequences. In contrast, governance is considered good when it is participatory, consensus oriented, accountable, transparent, responsive, effective, efficient, equitable, inclusive and respects the rule of law. It assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in the society are envisaged in decision-making.
6. Participation is a cornerstone of good governance. It can be direct or through legitimate intermediate institutions or representatives implying freedom of association and expression on the one hand, and an organized civil society on the other. Good governance requires mediation of different interests in society to reach a broad consensus on what is in the best interest of the whole community and how this can be achieved. It also requires an understanding of the historical, cultural and social contexts of a given society or community in order to secure just and fair approach. Equity and inclusiveness ensure that every individual member of the society, particularly the most vulnerable, does not feel excluded from the mainstream of social and political life.
7. Good governance means that processes and institutions produce results that meet the needs of society while making the best use of resources at their disposal. The concept of efficiency and effectiveness is also very important in the context of good governance. A legal framework, no matter how perfect it is, cannot, therefore, serve its purpose if adequate attention is not paid to the issues of enforcement, compliance and effectiveness. Equally important for compliance and effectiveness is the fairness of the formal rules, the extent they respond to broad social needs and the degree and quality of state intervention under them. Clearly drafted rules are needed and should, where appropriate, be complemented by more detailed regulations formulated and applied by capable regulatory bodies.
8. Transparency and accountability are key elements of good governance. Transparency means that decisions taken and their enforcement are done in a manner that follows enacted rules and regulations. Good governance requires system of accountability, which implies holding public officials responsible for their actions. Political leaders are ultimately responsible to their populations for government actions, and this means that there has to be accountability within government. For the system to work, an adequate and reliable flow of information is essential. Without it, the rules are not known, accountability is low, and uncertainties are

excessive. How this happens varies widely in different countries, depending upon cultural characteristics, political institutions and administrative capacities. Accountability is also extremely important throughout the economic system. Governments have significant role to play in ensuring accountability in the private sector, through company and securities legislation, competitive policy, and regulatory oversight.

9. Good Governance is impossible to be enforced without the rule of law. It 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 democracy. Universal democratic principles based upon an efficient body of rules underpin the organisation of a state, guarantee the rights and freedoms of individuals and strengthens 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, socio-economic context and particular ways of thinking.
10. Weak civil society, lack of good and efficient governance and rule of law along the practices of corruption is not a strange phenomenon for the BSEC member countries. Although varying in pace and magnitude, developed and developing countries have to put every effort for internalisation within the societies the principles of honesty, transparency and accountability. Fully democratic societies with effective and efficient governance nationally and locally serve as a guarantee for development and betterment in the countries and the region as a whole. There is also a prime necessity for multitude of reforms, which countries need to maximize their economic development potential. The faster and more sustainable is this process, the higher are the chances for broader regional economic stability and mutually beneficial economic cooperation.
11. Strengthening of good governance together with promotion of supremacy of law implies important consequences for economic cooperation regionally and globally. It constitutes one of the main requirements for smooth functioning of market economy and economic development. To secure clear laws governing the public and private sectors and to ensure that the rules are applied consistently to all, especially, in the areas like commerce, customs, taxation, border crossing, finances provide fair competition conditions and establish confidence attracting more businessmen and investors. The Assembly at its previous meetings have analysed the prevailing problems and came up with the Reports and Recommendations* on improvement of

* 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 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;

legislative framework enhancing various aspects of cooperation in the Black Sea region.

12. For the past years the Black Sea countries have made significant progress in promoting the rule of law and good governance. The countries took important steps in this direction and, indeed, in most of these countries, the formal procedures like taking decisions by the application of known principles or laws without the intervention of discretion in their application, the principle of separation of powers, law-abiding governmental powers, independent courts, transparency of legislation, and judicial review of the constitutionality of laws and other norms have settled in place. The strengthening of democratic values, although stronger in some countries and weaker in the others, should, however, be seen as an ongoing process to the ideal state. The scope for building democratic institution varies in pace and manner from country to country still requiring considerable effort for achieving fully democratic governance.
13. 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 democracies with vibrant economies, open political systems, strong civil society and efficient institutions. Without well established good governance backed by 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 political processes. It is necessary that efforts are concerted for mobilising support to ongoing legal reforms and improvement of the administration of justice. The present challenges comprise of support for broader democratic reforms and establishment of a sound legal framework, especially for the countries in transition in order to achieve visible results in improvement of quality of life. It is equally important to identify exactly which spheres are harmed by weak legal systems in order to tailor necessary recommendations for the reform to take place.

Parliamentary contribution

14. A key determinant for successful democratic system is the ability of democratically elected governments to secure 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. It is important that parliamentarians contribute more substantively in introducing democratic dimension to decision-making and establishment of checks-and-balances system.
15. Political representatives have a pivotal 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 democratic principles, particularly, political openness, political participation and political accountability.

16. As embodiment of popular will and being a country's supreme political authority and instance of control, parliament has to provide efficient public supervision and handle the task to streamline and simplify the rules, laws, regulations and administrative procedures in order to increase effectiveness and efficiency. It has to safeguard the principle of objectivity within the state and society and transparency and accountability in governance.
17. Parliaments have the capacity to launch and strengthen democratic reforms, safeguard the civil liberties, develop strong pluralistic open societies, promote and strengthen good governance, enhance public scrutiny, facilitate sustainable social and human development and give full effect to human rights and fundamental freedoms.
18. 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.
19. Given the role of the legislative branch in promoting and strengthening good governance, it is important that the parliamentary system and political aspect of regional cooperation is extended. Such interaction makes national parliaments more effective and creates strong ties between parliaments and parliamentarians in the region. Representatives of the national parliaments have to cooperate more intensively with their counterparts in the region and beyond it to fully benefit from sustainable development and strengthen democracy, establish strong civil society, effective and efficient institutional framework paving the way towards betterment and higher standards of living for their people.
20. 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, IPACIS, etc. have immense contribution for promotion joint policies for improvement of socio-economic situation and enforcement of democratic principles.

Comprehensive legislative system for institutional transformation and good governance

21. In the essence of the principle of good governance lays impartial enforcement of

laws, independent judiciary and incorruptible enforcement bodies. It also implies full protection of human rights, particularly those of minorities. All these can be secured through sound legal frameworks and necessary structural and institutional reform. The characteristics of each particular institution varies in the countries as they are at different level of political, economic, and social development reflecting a wide array of historical, geographic, and cultural factors.

22. A sound legal framework represents a comprehensive system essential element of which is a set of legally binding rules. Such rules, whether they are legislative or administrative in character, have to be applied equally to all those addressed by them. They should not be meant to benefit or hurt a specific person or persons through an abuse of the legislative power. Their content should respond to genuine social needs. These rules have to complement each other in a harmonious way and have to cover all spheres of life including those of economic, commercial, financial, social, etc. Adequate criminal law and procedures are also required to assure protection of individuals from abuses of organized crime, other acts of violence and political interference. Along with the measures of improving national legislative framework, the parallel process of harmonization and approximation of law to international standards should take place.
23. The appropriate processes through which such rules are made and enforced in practice are also very important. The appropriateness of the processes of rule-making, rule-enforcing and rule-changing obviously differs according to the culture, political system and other circumstances of each country. Simplicity of procedures, transparency of legal processes and accountability of the public officials involved in these processes contribute to the public's confidence in the legal framework as a whole and adds legitimacy.
24. Another important element of legal framework constitutes well-functioning public institutions staffed by trained individuals, transparent and accountable to citizens. The institutions in the milieu of good governance are bound by and adhere to regulations and apply such regulations without arbitrariness or corruption. An efficient and honest civil service, along with efficient regulatory bodies ensure the appropriate application of legal rules, especially, when it comes to judicial system.
25. Since the legal framework is not a mere collection of written laws and regulations, the manner in which these rules are implemented by government agencies and applied and interpreted by judges is very much important. A well-functioning law enforcement scheme and judiciary in which police and judges respectively apply the law in a fair and predictable manner is part and parcel of the legal framework needed for a good governance. Such a framework requires that rules are respected and ensured by the state forces and, at the same time, judiciary is responsible to identify inconsistencies in the applicable rules or between them and the basic law or the constitution. It serves as final monitor of allegations of corruption, arbitrariness and lack of accountability by other branches of government.
26. An independent and fair judicial system represents the institution, which acts as the final arbiter of a functioning legal system. Without efficient and honest institutions

for the enforcement of rules, the sound legal framework is impossible to be achieved. Judiciary plays a particularly important role in a system based on the rule of law. Other private or semi-private institutions such as bar associations, law schools and human rights organizations also have an important role to play, not only in support of the judiciary but of the proper functioning of the legal system as a whole.

27. 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. It should be noted that, that this progress has in many cases been achieved at a time of social and economic hardship 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 strengthens foundation for just and fair society.
28. It is noteworthy to mention that in all societies, and mostly in those where interpersonal relationships interfere in the public decision-making process and where nepotism or corruption is prevalent, informal rules are followed and respected*. These circumstances decline the quality of performance and destroy all notions of transparency, equity and the rule of law. It becomes a barrier to democratic reforms and the opening-up and liberalisation of the economy. It is particularly relevant to those transition countries where still the rule of the party in power rather than the rule of law prevails. General awareness and understanding by the public at large of the importance of the good governance and the rule of law in contrast to reliance on interpersonal relations, political or social influence, nepotism or corruption assumes extreme significance and requires continued support from the civil society. It implies respect of legal processes and institutions based on a broad conviction of the fairness of the system as a whole.
29. The respect of the law by government authorities, including leaders at the highest echelon of the bureaucratic and political structures is most important aspect of confidence for the civil society. Government interference beyond its available capacities is a dangerous impulse eroding the whole concept of good governance. Respect to law cannot be obtained in a climate of entrenched corruption and vested interests, nor can it be realistically expected that the population will have much respect for the law when those in power tend to ignore it or apply it selectively. Balance within the legal framework and an active civil society can create the pressure needed for the respect of law by the society and the individuals in power.

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

30. Civil society, as a domain of social organisation has direct impact upon strengthening of good governance, which in its turn promotes cultivation of citizen capacities, public opinion and judgment, freely flowing information, individual rights and protections, institutional representation, institutional checks and balances. The opportunity to act together is the experience that turns individuals toward the public welfare and convinces them for constant support in enhancing institutions of democratic governance.
31. The achievement of the features essential to good governance and the rule of law depend in large part on the unique circumstances prevailing in each country. It is necessary to take into consideration each country's political, social and legal traditions when developing legal reforms. It is important to tailor mutually reinforcing legal reforms and consequently to adapt them to a range of necessary institutions. In many cases, when countries tend to adopt western legal models without sufficient regard to particular realities it has negative impact on the development potential simply providing pretending action without changing social reality. The changes and reforms should concentrate on filling gaps and addressing problem areas remaining sensitive to the country's social, cultural and legal context.
32. The BSEC countries experience similar and troublesome problems in securing good governance, especially, those in transition. The main tasks for them 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 majority of the countries are institutionalisation of key democratic concepts: the rule of law, independence of the judiciary, executive oversight by the parliament, independence of the media and good governance; strong civil society backed by responsive, transparent, and accountable democratic governance. In general, countries pay greater attention to the consolidation of democracy, the rule of law and good governance, expanding the efforts for democratic development and for creating more secure and stable region within the context of integration into the European and global community.
33. The forthcoming enlargement of the European Union added dynamism to the process of European integration. The strategy of expanding EU towards the east embracing also 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, in particular, emphasizing harmonization of national laws with those of the European Union.

34. Although the success of democratic development depends on the policies undertaken within the national authorities, bilateral and multilateral cooperation also plays important complementary role. 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. Within the present world states have to take into account the global international standards binding them with their responsibilities within certain regional or global frameworks. As actors in the international politics, these countries are sharing universal principles of democracy, the rule of law and good governance.

III. CONCLUDING REMARKS

35. Good, effective public governance helps to strengthen democracy and human rights, promote economic prosperity and social cohesion, reduce poverty, enhance environmental protection, secure sustainable use of natural resources and deepen confidence in government and public administration.
36. 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 strengthen institutions that ensure public and private accountability including strong and impartial judiciaries.
37. 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 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.
38. Good governance is an ideal, which is difficult to achieve in its totality. Yet, countries and societies pursue the complicated path towards its achievement in its full essence. Parliaments and parliamentarians of the Black Sea countries have to take resolute action to make this ideal a reality, thus, meeting expectations of the peoples in the region willing to feel real prosperity and betterment stemming from the multilateral regional cooperation.