



**Organization for Security and Co-operation in Europe
Economic Forum (Senior Council)**

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Department for Conference Services

FIFTH MEETING OF THE ECONOMIC FORUM

Prague, 11-13 June 1997

SUMMARY

TABLE OF CONTENTS

	<u>Page</u>
Permanent Council Decision No. 143 (PC.DEC/143)	1
Agenda and Work Programme for the Fifth Meeting of the Economic Forum	3
Chairman's Summary of the Fifth Meeting of the Economic Forum	5
 <u>Reports of the Working Session Rapporteurs:</u>	
WORKING GROUP I	COVERAGE AND IMPLEMENTATION OF ECONOMIC LEGISLATION
Working Session 1:	Creating the legal basis to facilitate economic transactions and enhance economic growth in a market economy 13
Working Session 2:	Implementation of economic legislation in a correct and predictable manner 15
Working Session 3:	The importance of the rule of law in economic matters..... 17
 WORKING GROUP II	 ACCESSIBILITY, TRANSPARENCY AND STABILITY OF ECONOMIC LEGISLATION
Working Session 1:	Predictability in legal matters as a key factor in private sector economic planning..... 19
Working Session 2:	Ways of improving transparency in legal matters..... 22
Working Session 3:	Creating a stable framework for economic activity 25
Log of Contributions	28

93rd Plenary Meeting

PC Journal No. 93, Agenda item 1

DECISION No. 143

The Permanent Council decides that:

1. The 1997 Economic Forum (Fifth Meeting) will take place at the Czernin Palace, Prague, 11-13 June 1997.
2. The participants shall mainly be high-level representatives from participating States responsible for shaping international economic policy and legislation (trade, investment, services, economic co-operation) in the OSCE area. Participating States are encouraged to include representatives from the private sector in their delegations.
3. The overall theme shall be "Market Economy and the Rule of Law". Particular emphasis should be given to security-related aspects of economic legislation. In order to thus focus the discussion, the Economic Forum will concentrate on the following two main subjects:
 - (a) Coverage and Implementation of Economic Legislation
 - (b) Accessibility, Transparency and Stability of Economic Legislation
4. The Forum will:
 - (a) Contribute to the work in progress on a common and comprehensive security model for Europe for the twenty-first century - elements bearing on economic issues;
 - (b) Review the implementation of commitments in the economic dimension;
 - (c) Review the seminars held under the economic dimension in 1996/97;
 - (d) Adopt a programme for seminars under the economic dimension in 1997/1998. Appropriate proposals should be submitted to the Chairman-in-Office well in advance.
5. Like the Fourth Economic Forum, the format should foresee the active involvement of relevant international organizations and encourage open discussions.
6. Regional and more sharply focused topics shall be reserved for follow-up seminars.

7. A contribution illustrating the private sector's perception of possible measures with a view to enhancing the accessibility, transparency and stability of economic legislation would be useful for the discussions.
8. The following international organizations are invited to participate in the 1997 Economic Forum: United Nations Economic Commission for Europe, Organization for Economic Co-operation and Development, World Trade Organization, International Labour Organization, European Bank for Reconstruction and Development, European Investment Bank, International Bank for Reconstruction and Development, International Monetary Fund, Council of Europe.
9. The partners for co-operation (Japan and the Republic of Korea) and the Mediterranean partners for co-operation (Algeria, Egypt, Israel, Morocco, and Tunisia) are invited to attend the meeting.
10. Upon request by a delegation of an OSCE participating State, regional groupings which attended the Fourth Economic Forum may also be invited to attend the Fifth Economic Forum.
11. The Chairman of the Forum will present his summary conclusions from the discussions at the end of the meeting.

AGENDA AND WORK PROGRAMME FOR THE FIFTH MEETING OF THE
ECONOMIC FORUM

PRAGUE, 11-13 JUNE 1997

Theme: Market Economy and the Rule of Law

1. Opening:
 - Speech by a representative of the host country
2. Review of the implementation of commitments in the economic dimension
3. Introductory keynote speeches
4. Discussion by the Working Groups:
 - (a) Coverage and Implementation of Economic Legislation
 - (i) Creating the legal basis to facilitate economic transactions and enhance economic growth in a market economy
 - (ii) Implementation of economic legislation in a correct and predictable manner
 - (iii) The importance of the rule of law in economic matters
 - (b) Accessibility, Transparency and Stability of Economic Legislation
 - (i) Predictability in legal matters as a key factor in private sector economic planning
 - (ii) Ways of improving transparency in legal matters
 - (iii) Creating a stable framework for economic activity
5. Reports of the Working Groups
6. Programme of seminars to be held in 1997/1998 in the framework of the economic dimension of the OSCE
7. Dates of the Sixth Economic Forum
8. Chairman's Summary
9. Closure

WORK PROGRAMME

Working hours: 10 a.m. - 1 p.m.
3 p.m. - 6 p.m.

	Wednesday 11 June	Thursday 12 June	Friday 13 June
Morning	PL - Items 1, 2, 3	WG I - Item 4(a)(ii) WG II - Item 4(b)(ii)	(10 a.m. - 1.30 p.m.) PL - Items 5, 6, 7, 8, 9
Afternoon	WG I - Item 4(a)(i) WG II - Item 4(b)(i)	WG I - Item 4(a)(iii) WG II - Item 4(b)(iii)	

PL = Plenary meeting

WG = Working Group

CHAIRMAN'S SUMMARY OF THE FIFTH MEETING OF THE ECONOMIC FORUM

1. In accordance with Chapter VII of the 1992 Helsinki Decisions and pursuant to Decision No. 143 of the Permanent Council, the Fifth Economic Forum of the OSCE took place at the Czernin Palace in Prague from 11 to 13 June 1997. The participants in the Economic Forum were high-level representatives of participating States responsible for shaping international economic policy in the OSCE area. Several participating States included representatives of the private sector in their delegations.

The partners for co-operation (Japan and the Republic of Korea) and the Mediterranean partners for co-operation (Algeria, Egypt, Israel, Morocco and Tunisia) were invited to attend and to make contributions to the meeting.

The following international organizations were invited to participate in and to make contributions to the 1997 Economic Forum: the United Nations Economic Commission for Europe, the Organisation for Economic Co-operation and Development, the World Trade Organization, the International Labour Organization, the European Bank for Reconstruction and Development, the European Investment Bank, the International Bank for Reconstruction and Development, the International Monetary Fund, the Council of Europe, the World Intellectual Property Organization, the Black Sea Economic Co-operation, the Central European Initiative, the South East Europe Co-operation Initiative, the European Free Trade Association and the Commonwealth of Independent States. Their contributions to the preparatory work and during the meeting itself were highly appreciated.

2. The overall theme of the Fifth Meeting of the Economic Forum was Market Economy and the Rule of Law.

The discussion focused on two main aspects of the rule of law in economic matters, namely

- the relationship to economic development, and
- implications for security and stability.

3. At the opening plenary session the representative of the host country, the Deputy Minister for Foreign Affairs of the Czech Republic, Mr. Karel Kovanda, addressed the Economic Forum. Introductory keynote speeches were delivered by Ukraine, the United Kingdom and a private sector representative from Denmark.

4. Delegates underlined their commitment to the market economy. The transition period was, however, difficult. A number of countries in transition explained their difficulties in attaining a sufficient level of economic activity and continued and self-sustained economic growth. An unfulfilled need for major investments, including foreign investments in productive capacity, was cited among the reasons for this situation. The price for quick reforms was a considerable social division of society. Social measures to accompany the economic reforms were necessary. At the same time, such measures could slow down the reform process. The creation of a middle class was viewed as instrumental in obtaining stable economic development.

In one country which has adopted market economic policies, economic reforms had focused on achieving a level of macroeconomic stability combined with the introduction of basic provisions aimed at protecting investment. Initially, this approach had been successful in as much as it had achieved significant growth rates. However, the absence of a wider legal reform to accompany the economic reforms had in some cases led to a situation where public confidence in the economic system was rapidly deteriorating.

It was noted that the rule of law was a precondition for establishing a market economy. However, the rule of law should be seen as an ongoing rather than a completed process, very much dependent on historical and cultural differences. Legislation could be created in a multitude of ways. A distinction was made between legislation creating rights of businesses and legislation establishing control over them. It was noted that private businesses were best assisted through consistent and transparent rules of a non-regulatory nature. Also, the important role of the implementors of legislation, including lawyers and judges, was underlined. Examples of implementation of legislation through non-government institutions were given.

Confidence-building was identified as a key objective in economic legislation and its implementation. Only when economic operators are confident that their efforts and results will be protected by the legal system are they likely to display their skills in an optimal way. On the other hand there is a need for the private sector to know the requirements that the legal system places on their activities so that they may carry out adequate assessments of their business opportunities and risks.

The negative effects of bribery were highlighted. It was stressed that the toleration of bribes undermines public support for democracy and market economy. The criticism was made that certain countries still regarded bribery as a legitimate business cost for which tax deduction can be made. Bribery ought not to be regarded as legitimate and should be criminalized. The important work of various international organizations in this field was mentioned.

5. The relevance of the theme to the work in the OSCE on addressing risks and challenges to security was underlined. The links between the existence of the rule of law and national as well as international security was illustrated, *inter alia*, by recent developments in one participating State. The OSCE has a role to play in addressing these risks and challenges. The political role of the OSCE in giving impetus to competent international institutions was underlined. Strengthening co-operative relations in the appropriate form between the OSCE and such institutions was encouraged. Such links should contribute to the work on a Common and Comprehensive Security Model for Europe for the twenty-first century by promoting the concept of mutually reinforcing institutions, thus facilitating the creation of a Europe free of dividing lines.

Summary of discussions in Working Group I

6. Delegations expressed the view that business legislation should protect property and other business rights, set the framework for transactions, contain rules governing the entry into and exit from productive activity and promote competition and oversee the market. Owing to the former monopoly system of the economies in transition special attention had to be given to the laws on competition. It was repeatedly emphasized that the legislation should be transparent, coherent, consistent, predictable, fair, and easily verifiable. Furthermore, the accessibility of laws and legal procedures was highlighted. The transition process and further

development of the economy would be hindered if legislation did not take these aspects into account.

Delegations emphasized that the necessary legal basis and legal systems were not created overnight. The development of the rule of law had to follow the economic reforms closely. Otherwise, there was a risk that the reforms could collapse.

The judiciary was not the only instrument within the rule of law. Delegations referred to measures for mediation and arbitration outside the courts. This could ease the work of the judiciary. Another important source for the legal framework was international agreements. International organizations could play a role in promoting a coherent legal framework. The working group saw a need for co-operation between States and organizations in this respect.

Attention should also be devoted to legal harmonization and international integration of laws. In this respect it was considered important that compatible conditions be created and that arrangements for currency, investment and profit transfers continued to be streamlined and made more efficient.

Special attention was given to effective implementation and enforcement of laws. If not implemented and enforced laws would be undermined. It was noted that unsatisfactory enforcement was caused, *inter alia*, by insufficient resources and training.

Several delegations mentioned economic crime and the existence of shadow economies. Large-scale corruption, bribery and money-laundering constituted threats to the market economy and were qualified as some of the factors that hinder transition and economic development. Criminal action such as evasion of taxes and social contributions were, however, also a threat to the market economy. The laws had two functions in this respect: to provide security against organized crime and to fight bribery and corruption, *inter alia*, by adopting social and fiscal policies which do not tolerate such practices.

The Rapporteur reports from Working Group I are included in this summary.

Summary of discussions in Working Group II

7. Discussions in the Working Group centred around various aspects of confidence-building of importance to both foreign and domestic investors and businessmen. Confidence in a legal system can be enhanced in many ways. Yet it can suffer serious setbacks if just a few things are missing. Transparency in legal proceedings is a feature which contributes in a general way to confidence. It should be known in advance who makes the legal decisions and what legal rules they are following. Furthermore, the decisions should be accompanied by a clear assessment of the factual circumstances as well as an interpretation of the rules that have been followed. These factors help the parties to understand how the system is functioning. This applies to decisions of both a judicial and an administrative character. Arbitrary decisions become less likely and confidence in democratically elected institutions may be enhanced. The risk of corruption may be reduced when legal decisions are made subject to public scrutiny.

International commitments such as those undertaken within the framework of WTO may in certain areas serve to enhance transparency. Early involvement of the national business community in the legislative process may serve this purpose.

Where transparency prevails this will normally lead to predictability. Economic actors will obtain a better basis for making business decisions. They will be able to eliminate certain risks and thereby reduce their costs. Certain investments that otherwise appear unattractive can be made with good prospects for success.

However, a number of factors may in one way or another serve to diminish the predictability of the legal situation. If laws are insufficient in terms of coverage or clarity or if they are not readily available to market participants they cannot fulfil their role properly. Similarly, an important condition for predictability is that all parties are guaranteed equal treatment under the law and that the laws are adequately and consistently implemented.

Predictability in legal matters requires a degree of stability in economic legislation. Frequent and abrupt changes in basic business legislation may make planning processes difficult for businessmen and may also have a negative impact on the effectiveness of implementation and enforcement. However, stability should not lead to a static situation where necessary measures are not undertaken.

The Rapporteur reports from Working Group II are included in this summary.

Private sector participation

8. The active participation of private sector representatives in the Economic Forum was welcomed and their views highly appreciated. Participating States are encouraged to stimulate broader involvement of private sector representatives in the Economic Dimension.

Under the chairmanship of a representative of the private sector participants from the business community held an informal working breakfast to discuss issues relevant to the theme of the Economic Forum. There was also an exchange of views on the establishment of a European Business Congress. A note from the meeting of the private sector participants was circulated at the Economic Forum and is attached to this Summary.

Follow-up to the Economic Forum

9. The participating States welcomed the following programme of seminars to be held in 1997/1998 in the framework of the Economic Dimension of the OSCE.

- Seminar on the Role of Legislation for Social and Economic Transition, to be held in Almaty in October 1997.
- Seminar on Promoting Environmentally Sustainable Development in South East Europe, to be held in Skopje in co-operation with the UN/ECE, OECD, UNEP, World Bank and SECI. Date to be agreed with the host country.
- Seminar on Post-Conflict Rehabilitation in the OSCE Area, to be held in Moscow in co-operation with the World Bank, UN/ECE, UNDP, UNIDO, EBRD, CIS and IMF. Date to be agreed with the host country.
- Follow-up Seminar on Promoting Environmentally Sustainable Development in the Aral Sea Region, to be held in Tashkent in co-operation with the

Liaison Office in Central Asia and UN agencies. Date to be agreed with host country.

- Seminar on the Creation of a Mechanism for Identification of Security Threats and Challenges arising from Economic, Social and Ecological Problems. Date and venue to be agreed.
- Seminar on Bribery and Corrupt Business Practices. Venue to be agreed. Date: March 1998.

10. The financial basis for the above-mentioned seminars will be provided by the host countries and may be supported by contributions from participating States to the Voluntary Fund for Activities Related to the Economic Aspects of Security. The seminars are to be organized in close co-operation with competent international organizations. It was proposed that seminars under the Economic Dimension in 1998 be financed through the OSCE budget.

11. It was proposed that a separate implementation review conference of the Economic Dimension be held in 1998 in line with the "Economic Dimension Implementation Review Meeting" held in Geneva on 22-23 January 1996. At the same time it was noted that appropriate implementation review mechanisms already existed in the Permanent Council, the OSCE review meeting and the Economic Forum. It was also noted that there was further scope for utilizing the potential of the Permanent Council and the Economic Forum in this regard.

12. Some delegations proposed enhancing the Economic Dimension in order to provide support for countries in transition, particularly those where economic and social problems gave rise to security concerns. The decision of the Lisbon Summit to elaborate before the 1997 Ministerial in Copenhagen a mandate for a co-ordinator within the OSCE Secretariat on OSCE economic and environmental activities was mentioned in this connection. Others reiterated that the role of the Economic Dimension was to provide impetus to the competent international organizations and that overlap and duplication should be avoided. It was the general assessment that the mandate for the Economic Co-ordinator was being dealt with in the appropriate forum.

13. There was general agreement among participating States that the next Economic Forum meeting should take place in Prague on 3-5 June 1998.

Note on a meeting of private sector participants at the
Fifth Meeting of the Economic Forum

Prague, 12 June 1997

The meeting was arranged by the Danish Chairman-in-Office to provide a forum for members of the private sector participating at the Fifth Meeting of the Economic Forum of the OSCE. Mr. Jon Stokholm from Denmark took the Chair. Mr. Ralph Land representing UNICE was appointed Rapporteur.

1. The group expressed their appreciation to the OSCE for the opportunity to participate in this Fifth Economic Forum. We share in a common belief that political security and economic stability and growth are inextricably linked. As command economies transform into market economies and State assets are placed in private hands and under entrepreneurial management, private sector participants have much practical experience to offer to countries in transition. We urge the OSCE to continue to expand the involvement of the private sector and to encourage a continuing dialogue among participating States as to how the private sector initiative can best be harnessed.

2. Mr. Marouchtchenko of Gazprom outlined plans created by the Organizing Committee of business sector representatives to create a European Business Congress (EBC), which is to be inaugurated at a conference in Bonn on 8-11 December 1997.

- The EBC would be entirely funded by membership subscriptions from the private sector. The costs of the inaugural conference have already been subscribed.
- The drafts of a mission statement and a charter of the EBC would be circulated before the end of the conference. The organization would have a small permanent secretariat and would operate through topic-related working committees and international assemblies providing information to the OSCE Economic Fora.
- Invitations to attend the Bonn conference would be sent to major companies in each OSCE participating State and to the appropriate business organizations which should represent SMEs. It was envisaged that up to eight major companies and banks from each State would be invited.

3. The meeting noted the proposals with interest.

- The view was expressed that there was a risk that there might be proliferation of business organizations with similar objectives.
- Views were also expressed that the present proposals could create an 'elite' organization which would pay insufficient attention to the crucially important SME sector.

4. The planned appointment of an economic and environment co-ordinator by the OSCE was welcomed and it was suggested that he/she should maintain contact with the activities of the relevant private sector interest groups including the proposed EBC.

5. The meeting agreed that issues related to corruption, including bribery, asset-stripping and money-laundering were matters of grave concern to the private sector with an important bearing on security. Combating corruption should, therefore, become a priority subject for review by business organizations.

6. In view of the importance to the transition to market economies of a firm underpinning of law, the group agreed that it was essential that organizations should have adequate access to qualified legal assistance.

WORKING GROUP I
WORKING SESSION 1

Wednesday, 11 June 1997

Report of the Working Session Rapporteur

Agenda item 4(a): Coverage and Implementation of Economic Legislation

- (i): Creating the legal basis to facilitate economic transactions and enhance economic growth in a market economy
-

In a brief introduction, the Moderator stressed the functions of law for the market. The importance of defining and protecting private property rights was underlined. Legal traditions cannot be established overnight, and the time dimension should also be taken into consideration. Globalization and the rapid development it endangers were seen as a challenge to the stability and predictability of a legal system and it was suggested that legislative strategy be adapted to accommodate the particularities of transition by focusing on clarity, coherence and enforceability.

The lead speaker identified four basic economic functions that need to be performed by the legal framework in a market economy, namely:

- protection of property rights;
- establishment of a framework for the transfer of these rights;
- rules governing the entry into and exit from productive activity;
- promotion of competition; overseeing the market.

These functions represent the minimum legal requirements of a market economy and can serve as a starting point for the analysis of legal reform in transition economies. The lead speaker touched briefly on property rights, contract law, company law, bankruptcy legislation, competition law, banking and credit, capital markets, insurance law and social security, and finally constitutional law. In this broad overview the most important characteristics of the different fields were outlined.

Competition law and its importance for positive economic development and the creation of a vibrant private sector was mentioned by several speakers, who set it in the context of globalization.

Some international organizations reported on their assistance to countries in transition. By advising and assisting the latter, intergovernmental organizations can play an important role in the development of international norms and standards in key areas of business and financial law. International agreements and arrangements are an integral component of the rule of law. A case in point is the WTO, which imposes a well defined discipline, the intention of which is to ensure stable and predictable market access.

The session revealed complete consensus on the fundamental role of the rule of law in economic transaction and growth in a market economy. In all interventions it was stressed that lasting economic development is not possible without a sound legal basis. Several delegations informed the Working Group about progress in the economic reforms of their respective countries. These reforms have all involved thorough and ongoing changes in the legal basis. The rule of law was perceived as a prerequisite for security in any given country. Democracy, market economy and the rule of law form a system which might unravel if one of these elements is eliminated. The ethic and social dimension, without which a society cannot really function, was also stressed.

The debate revealed some problem areas. Unsatisfactory enforcement is caused, *inter alia*, by lack of resources and training. Further problems are the timely promulgation of new laws and regulations, their sequencing, and access to information about changes in the legal basis. Several speakers stressed the importance of international harmonization of laws, of the approximation of legal standards in the area of economic legislation, and, in general, of increasing dialogue between legal systems both on a global and a regional basis. In the case of certain countries this is achieved through the process of approximation to EU standards - with a view in addition to their future membership of the EU.

WORKING GROUP I
WORKING SESSION 2

Thursday, 12 June 1997

Report of the Working Session Rapporteur

- Agenda item 4(a): Coverage and Implementation of Economic Legislation
- (ii): Implementation of economic legislation in a correct and predictable manner
-

In his introductory statement, the Moderator indicated that the item to be debated was an extremely complex one and invited the participants to give their reflections and comments following the guidelines suggested in the Food for Thought paper prepared by the Danish Chairmanship for the session. For example, the need for

- a competent and well trained judiciary;
- a judiciary that was not subject to undue political influence;
- a legal system capable of dealing efficiently with corruption and organized crime;
- a rapid and fair dispute settlement procedure; and
- a legislative and judicial system that prevented arbitrary solutions and settlements.

In the course of the ensuing discussion, many important ideas were emphasized by national delegations and international representatives. Several delegations summarized their experiences in the area of economic transition as they related to problems of judicial reform, social considerations and their concerns about the future.

A number of speakers underlined the importance of having well drafted and clear legislation for the functioning of the main institutions in a free market economy - for example, banks, stock exchanges, investment regulations, bankruptcy arrangements, company law, etc.

Such clarity, it was noted, would be vital if there was to be public trust in the economic transition, and therefore political stability. One delegate referred to the need to take into account, during the transition to a market economy, national interests such as economic security, technological capacity, social welfare and wealth imbalances within the population. Another speaker emphasized that the law should reflect national sensibilities.

It was also emphasized by some speakers that the lack of experience in administrative and judicial matters in a market economy - in law enforcement, for example - could be a real obstacle to economic and social development. Therefore, legislative reform had to be accompanied by progress in the reform of the administration and judiciary. The public service had to be accountable and had to function on a legal and regulated basis.

The importance of training law enforcement officials, public servants, judges and other key personnel was emphasized by various speakers, and many of them outlined their national experiences with such training efforts. One delegate indicated that the issue of State immunity should be seriously reviewed.

It was pointed out that many countries were involved in international assistance programmes for legal and administrative training. It was also underlined that economic, juridical and administrative performance were all connected to the development of a democratic society.

A number of speakers noted that training and the development of legislation were not exclusively national issues, but had also to take into consideration international instruments and requirements.

Perhaps the problem mentioned most frequently during the discussions was that of the fight against corruption and organized crime in its various forms. The danger and the threat that they represented to law enforcement and implementation, to the economic transition, and to public and national security were emphasized by many speakers.

The representatives of many countries and international organizations expressed the importance of multi-disciplinary and global approaches to this problem at all levels - multilateral, regional, bilateral and national. As an example of regional co-operation, one delegate mentioned the recent meeting of Ministers of Foreign Affairs of South-East Europe held in Thessaloniki on 9-10 June 1997, the declaration adopted there and specifically Article 5 thereof. It was evident that much was currently being done in this respect, but that all had to do more.

Some delegations stated that governments and leaders needed to demonstrate political will in the fight against corruption and that precise follow-up actions should be formulated at national and international level.

Some speakers underlined the need for strengthening international co-operation in economic and judicial fields, particularly in dealing with corruption, and a number of ideas were proposed in that respect. The most significant aspect of the meeting, perhaps, was the remarkable degree of agreement that corruption was a problem from which none of us is immune.

WORKING GROUP I
WORKING SESSION 3

Thursday, 12 June 1997

Report of the Working Session Rapporteur

Agenda item 4(a): Coverage and Implementation of Economic Legislation

(iii): The importance of the rule of law in economic matters

This session examined three aspects:

- importance of the rule of law;
- the main challenges which countries faced in promoting the rule of law;
- recommendations for meeting these challenges.

1. Importance of rule of law

Delegates defined the rule of law differently. One delegate argued that the rule of law referred not just to the laws themselves but to the institutions and processes.

All delegates agreed, however, that the rule of law is a fundamental component of a stable and functioning market economy. For the private sector, as one delegate argued, this meant: predictability, fairness, security, and enforceability.

Where these conditions did not exist, the same delegate argued, the private sector would suffer from:

- weak enforcement of intellectual property rights, through its illicit use, copying and counterfeiting;
- threats from organized crime;
- unknown environmental liabilities;
- bribery and corruption.

Another delegate referred to the higher costs which the private sector faced in countries where the rule of law did not exist.

Delegates agreed that the absence of the rule of law was detrimental to the chances of a country to attract foreign direct investment.

2. Main challenges

The tasks facing the transition economies in improving the rule of law were examined.

In general terms the task, observed one delegation, was to develop a system of legal decision-taking according to rules and not to individual discretion.

According to other delegations, the tasks varied according to the different stage of development of the country concerned. For some, the task was to adjust laws to the transition process; for others to the transformation of their economies as part of an integrated global economy; and for others, accession to regional and international bodies. In some cases transition economies had to adjust their laws to all three processes at the same time.

Meeting the challenges, one delegation argued, brought rewards. Trade and investment would flourish more easily in an environment where standards and legal conditions were harmonized.

But the challenges, several delegates also noted, would be difficult to achieve. The hiring of experts and international consultants was expensive. The hectic pace of law making and revision could overburden the legislators and create delays and bottlenecks. Adjustment to western standards, however, had to be done in harmony with domestic law.

3. Recommendations

To address these challenges delegates referred to the useful role played by the international organizations in training personnel; in raising standards of domestic laws through international laws and conventions; and in restructuring the old regulations.

A number of recommendations were made:

- improvements to the rule of law had to make the civil service - not just the judges - more able to implement legislation;
- long-term improvements in the training of lawyers and judges had to be carried out by local universities. The use of international consultants to help law makers in the transition economies should be used only as a stop gap, interim measure.

One delegate proposed that an Economic Dimension seminar be held on the subject of bribery and corruption and the means of eliminating it.

The same delegate also proposed that other more permanent bodies, involving the business community, advising on policy formation and geared to meet the needs of small- and medium-sized enterprises, might be created.

WORKING GROUP II
WORKING SESSION 1

Wednesday, 11 June 1997

Report of the Working Session Rapporteur

- Agenda item 4(b): Accessibility, Transparency and Stability of Economic Legislation
- (i): Predictability in legal matters as a key factor in private sector economic planning
-

Following a description of the work of UN/ECE, three issues were introduced by the Moderator to facilitate the discussion:

1. Why is predictability in legal matters important for private sector economic planning and development?
2. What are the sources of unpredictability and, conversely, factors enhancing predictability?
3. Concrete solutions or recommendations and means of assistance aimed at increasing predictability.

1. The importance of predictability

It was noted that predictability in legal matters is important as it helps to reduce to an extent the uncertainty inherent in economic activity in a market economy by providing a stable basis for planning of entrepreneurial activities. Although historical examples show that even in the absence of any law, economic development still takes place, the challenge faced by the countries with an economy in transition consists in the transformation of their economy in parallel with the establishment and consolidation of the rule of law. In many cases legal reform not only consists of adapting existing legislation, but also of introducing legislation in completely new spheres (examples mentioned include local government, laws on securities and the stock exchange, labour laws and social security). The importance of taking into account national characteristics when designing new legislation was mentioned.

2. Sources of unpredictability and factors enhancing predictability

This issue attracted most attention during the WG session. The transition process itself contributes to some extent to unpredictability in legal matters, as legislative reform is a time-consuming process, during which adjustments and even radical changes can occur. It is important, however, that the very foundations of the legal system essential for a market economy remain unchanged.

For legal rules to ensure predictability, they must be adequate, clear, objective and well known to citizens and market participants. Procedures, institutions and information are essential in order to bridge the gap between book law and law in practice. One issue discussed at some length concerned the changes in political priorities following the change in government after elections. Since the legislative process is not and should not be apolitical, it

is important that any changes in law do not discriminate against individual persons or companies, but rather apply uniformly to an objectively defined group of persons or companies.

Several delegations emphasized the positive role played by membership in international institutions and organizations and by participation in international conventions and treaties in the establishment of the necessary legal and institutional framework in transition economies. Particular mention was made of the law approximation foreseen in the agreements of the European Union, in particular with the associated countries in Central and Eastern Europe, and of the process leading to accession to the OECD and the WTO. International obligations create the pressure required for essential legislation to be enacted. At the same time, the trend towards globalization limits the freedom of action by individual countries, and in most cases the internationally established regulatory framework has to be accepted.

The experience of Hungary, a country particularly successful in attracting foreign direct investment, was presented as an example in the context of predictability. Two fundamental sets of guarantees were thought to have decisively contributed to this result:

- guarantee of the repatriation of profits and capital in the currency of origin of the foreign investment;
- guarantee of full and immediate indemnification for any loss incurred because of nationalization or expropriation.

Additional factors which have had a positive influence are the absence of the need for licences, full liberalization of investment flows, national treatment for foreign companies registered in the country, avoidance of double taxation and, more recently, currency convertibility.

3. Recommendations for action and international assistance

Reference was made to the relevant work of the UN/ECE, and in particular the work of WP 5, work on BOT (build-operate-transfer), and the recently created advisory group on real property issues. It was suggested that the findings of this group be made available to the OSCE participating States for comments in the course of 1997, so that a summary document could be circulated next year. Close co-operation between the UN/ECE and the OSCE was suggested by the Hungarian delegate as a priority matter. Generally, close co-operation and co-ordination among international organizations was thought to be highly beneficial.

The importance of accession to and ratification of international conventions relevant to international economic co-operation, such as the New York Convention, was emphasized and an appeal launched to all participating States to take the necessary steps. The activity of the International Centre for the Settlement of Investment Disputes, which is affiliated with the World Bank, was mentioned, as was the provision of legal training by the International Development Law Institute (Rome) and its co-operation with the Central European Initiative.

Elements of self-enforcement should be considered; business people and companies have both interest in and the means to undertake steps which could to a certain extent make up, temporarily or more permanently, for weaknesses in the official enforcement

mechanisms. Suggestions were made as to the styles for drafting legislation and its interpretation by the judicial system.

Given the importance of law enforcement and implementation in addition to the enactment of legislation, it was stressed that political will in favour of economic reforms had to be complemented by the financial means for setting up government agencies and institutions and carrying out administrative reforms. In that context reference was made to the assistance provided by the European Union and particularly the PHARE and TACIS programmes which, after the initial phase of reform when know-how had to be imported from developed market economies, have helped to create the appropriate skills domestically and to generate the required resources.

WORKING GROUP II
WORKING SESSION 2

Thursday, 12 June 1997

Report of the Working Session Rapporteur

Agenda item 4(b): Accessibility, Transparency and Stability of Economic Legislation

(ii): Ways of improving transparency in legal matters

The topic was introduced by the Moderator, who stressed the importance of transparency in legal matters as the means to provide foreign investors with an adequate level of confidence and guarantees, especially in transition economies. He identified three possible forms of legal transparency or three levels at which transparency should be achieved: the adoption of legislation, the judicial system of law enforcement and contract law, and the implementation of rules by the administration.

The first keynote speaker focused on the WTO's role in enhancing transparency in the field of trade legislation. This was achieved mainly in three ways:

1. The notification requisite imposed by the WTO on all Member States, thus obliging them to notify the adoption of relevant legislation, both domestic and international, before it can actually become into force. The legislation is then assessed by the WTO in order to check that it actually complies with the organization rules. The notification requisites may vary depending on the case, not only in terms of procedure, deadline and format, but also as to the scope of the notification. There are currently 215 different requisites for notification to the WTO. A Central Register of Notification, which is periodically updated and which is accessible to all Member States, exists to make the transparency principle operative.
2. The WTO mechanism for reviewing Member States' trade policies, which replaced the old GATT observation system and which ensures that Member States comply with the conventions signed and helps to improve the transparency in States' trade practice. The 131 WTO Member States are thus subject to periodic reviews of their trade policy and its impact on world trade. The periodicity of such reviews depends on the State's specific weight in international trade.
3. The WTO understanding on rules and procedures governing the settlement of disputes, whereby any Member State may bring a dispute before the WTO General Council. There have been 83 such cases to date, most of which have been resolved through bilateral consultations.

The second keynote speaker addressed the issue of how States can create a legal framework to attract private investments in order to develop or improve the infrastructures in transition economies. A new tool for this purpose is the so-called Public Private Partnership (PPP), whereby public services are provided through private financing. This technique can operate in different ways, the most common of which is BOT (build-operate-transfer). The success of BOTs and similar schemes in some countries has raised high expectations that they could be used to meet the needs of transition economies with regard to infrastructure development and modernization. However, experience has shown that such expectations

have only been met in a limited number of cases. The speaker identified three myths that must be overcome in order to ensure the viability of BOTs in transition economies. These myths are: (i) that governments can thus receive economic assets at no extra cost or risk; (ii) that public services, once privatized, lose their social connotation; and (iii) that a legal and regulatory framework is unnecessary. It followed that there is a need for governments to:

- reduce risks and promote rewards in infrastructure projects;
- provide sufficient political support, including financial commitment, and ensure the social acceptability of such projects; and
- provide an adequate legal and regulatory framework that allows for an acceptable level of transparency in the procurement process.

The speaker then concluded that, provided these three preconditions were met, PPPs could be an important tool in the process of modernization of infrastructures in transition economies.

An exchange of views then followed as to what governments and the private sector could do to improve transparency. One delegation stressed the point that, in order to provide foreign investors with a sufficient level of confidence, a clear, consistent and stable legal basis was necessary, together with an adequate, non-biased law-enforcement system. Some delegations explained their national experience in trying to improve transparency in order to attract investors. One delegate expressed his country's difficulties in the process of economic reform owing to the fact that rapid action was needed to avoid the risk of involution, and therefore economic reforms often preceded legal ones. The lack of legal experts with sufficient experience was also mentioned. He then explained his country's medium-term programme for economic development, the publication of which was intended to enhance the level of transparency with regard to the government's intentions in terms of economic policy. The interrelation between domestic legal processes and the general trend for international integration was also mentioned.

One delegate said that administrative decisions should always be accompanied by the reasons behind their adoption, in order to make them more understandable to the parties involved. Another delegation mentioned the need for governments to respect both domestic and international legislation, to apply it in a transparent and predictable way, based on a credible judiciary system, and to respect the principle of non-discrimination. It was stressed that legislation should be transparent not only so as to provide a close link between security and economic activities, including investment, but also because transparency is a condition for democracy to function. Another delegation expressed the view that a country's participation in the WTO was the best way to achieve the highest level of transparency. Some delegations explained the changes that had been adopted in domestic legislation in order to ensure a sufficient degree of transparency in the privatization process. The point was then made that sometimes the existence of clear, adequate legislation on its own did not provide a sufficient level of transparency because there was an information gap with the interested parties. Permanent, efficient dialogue with the business community was therefore necessary. Another delegate mentioned the Institute for the Unification of International Private Law, also known as Unidroit, as a further useful tool available for States to update their legislation and adjust their behaviour in the commercial field.

In conclusion, there was general agreement as to the importance of transparency in the legal field, to which both States and the private sector could contribute and which should be reflected at all levels and in all the phases of the political process. As an essential attribute of the rule of law, transparency had positive effects not only in the economic field, thus attracting investments, but also in the democratic performance of States.

WORKING GROUP II
WORKING SESSION 3

Thursday, 12 June 1997

Report of the Working Session Rapporteur

Agenda item 4(b): Accessibility, Transparency and Stability of Economic Legislation

(iii): Creating a stable framework for economic activity

The discussion in this Working session was very lively and wide-ranging and provided for a look at its theme from many different, though complementary angles. Thus, in reflecting it in the present report, it is not possible to reduce it to a few conclusions to be separated from an account of the debate. Therefore, each of the following numbered items contains its own conclusion.

1. In his introductory remarks, the Moderator pointed out that the themes of the present Economic Forum, and especially of Working Group II, were particularly closely interwoven. Thus, the discussion on how to achieve a stable framework for economic activities would very probably also touch upon the issues of transparency, etc. This was entirely borne out by the subsequent presentations and debate.

The Moderator also referred to the desirability, in this OSCE Forum, of achieving a link between the concept of a stable framework in the economic field and the general concept of security.

2. The first lead speaker undertook a brief and general stocktaking of transition countries' results in creating domestic conditions of stability and predictability. A few years ago, the main concerns of potential investor companies directed towards countries in transition related to missing or unsatisfactory legislation; nowadays, legislation was regarded as having made great strides. Instead, it was the application of the laws by the respective local administrations that gave the main causes for complaint.

The first lead speaker made the following recommendations as regards the improvement of conditions leading to a stable framework for economic activity in the participant states of the OSCE, specifically concerning conditions favourable to foreign investment:

- setting up information and advisory councils for respective target countries to enable actual and potential investors to exchange experience;
- installing ombudspersons for investors to turn to in these countries;
- in recognition of the link between conditions of stability and predictability on the one hand, and the necessity for increased harmonization of standards on the other, efforts to achieve harmonization in all fields of commerce and business should be encouraged - for example, through the accession of WTO countries to harmonization agreements under that organization's auspices.

3. The second lead speaker viewed the issue of stability and predictability from the perspective of the range of macroeconomic measures that a given country's government should take. These included prudent monetary and fiscal policies, a fair tax system, and an appropriate division of tasks between the Government and the private sector. In that context, the speaker also pointed out that deregulation, which occupied such a prominent place in today's international economic agenda, must go hand in hand with an improvement in the quality of the necessary regulation.

4. The third lead speaker's presentation was dedicated to good corporate control and governance as an element of a stable framework for business. The transition countries' record in that field showed lingering problems as well as important achievements.

Expectations as to the effects of company privatization on the improvement of the running of those corporations were high. However, in many instances, privatization had led to the companies' managers operating entirely in their own perceived short-term interest and without control by the new owners.

The lead speaker made a series of recommendations for legislation, briefly summarized below, aimed at ensuring better accountability by company managers and therefore making these enterprises attract new capital and restructure and so become viable in market conditions.

This legislation should, *inter alia*:

- provide for the tradeability of shares between the enterprise insiders, managers and employees, and the wider public;
- give shareholders the right to challenge managers, make them provide necessary information and thus ensure transparency;
- ensure the establishment of independent share registers.

5. In the ensuing discussion, one participant took up a reflection that had already figured in one of the lead presentations by pointing out the dichotomy between desirable stability of conditions for trade and investment, and inevitable change. Stability must not become rigidity but change should be channelled into predictable patterns. As subsequent participants agreed, however, this predictability was not entirely achievable under real-life conditions.

6. Several participants mentioned that, while reform legislation was now in place throughout the post-communist area, the application and knowledge of the relevant laws seemed to present problems, and that there was accordingly a need for sound, up-to-date legal education and re-training.

7. One particularly broad-ranging and thought-provoking contribution was made by a participant who invited the Working Group to consider that, with all due regard to the paramount legal element among the conditions for a stable economic framework, it should not be forgotten that mere geographical, historic, and political factors could frustrate a well-meaning reform-minded government's efforts, even if it had made important exertions in the legal field. Those factors could combine to create a negative image of a country in the international media and consequently among international investors. The "turning around" of

such an image, in which the “only good news was bad news” attitude of the media played a role, could prove exceedingly difficult for any government. Participants recognized that the factors involved in this phenomenon - namely, recognition of a government’s reform efforts by the foreign business community and/or the media, and the “turning around” of its image as a target for investors - had to be seen as part of the unpredictable elements in any economic policy calculation.

8. The possible positive effects of establishing a European Business Congress for the OSCE region on the enhancing of mutual confidence were pointed out. It was added by one participant that, in order to satisfy those expectations, such a Business Congress should have a balanced membership in terms of representation by large, medium and small businesses, and various economic sectors.

9. Several delegations from countries in transition speaking in their national capacity highlighted an important aspect of the improvement of stability conditions, namely policies in the field of neighbourly and sub-regional relations. Participants were made aware that since the beginning of the reform process an impressive system of interlocking bilateral, regional and sub-regional co-operation networks, involving entities from the State level to regions and municipalities had been created. The confidence- and therefore also stability-building effects, on business in particular, were evident.



**Log of Contributions to the Fifth Meeting of the Economic Forum
Prague, 11-13 June 1997**

Theme: Market Economy and the Rule of Law

Ref. No.	Date	Author	Title/Subject	Lang.
I. Plenary sessions				
SC/11/97	11.06.97	Danish Chairmanship	Opening remarks	E
SC/13/97	11.06.97	Denmark	Keynote speech: The Rule of Law - the Experience of the Private Sector	E
SC/17/97	11.06.97	Czech Republic	The Market Economy and the Rule of Law: The Czech Experience in Transition to Them	E
SC/20/97	11.06.97	Netherlands-EU (European Commission)	Statement at the opening plenary	E
SC/25/97	11.06.97	UN/ECE	Statement at the opening plenary	E
SC/29/97	11.06.97	United Kingdom	Market Economy and the Rule of Law from the UK perspective (keynote speech)	E
SC/30/97	11.06.97	Armenia	Statement at the opening plenary	E
SC/33/97	11.06.97	SECI	Written contribution to the opening plenary	E
SC/34/97	11.06.97	USA	Statement at the opening plenary	E
SC/36/97	11.06.97	Kazakstan	Statement at the opening plenary	R
SC/37/97	11.06.97	Romania	Statement at the opening plenary	F
SC/38/97	11.06.97	USA	"Food for thought" paper on corrupt business practices	E
SC/39/97	11.06.97	OSCE Parliamentary Assembly	Projet d'Intervention de M. Michel Voisin	F
SC/40/97	11.06.97	Russian Federation	Statement at the opening plenary	E/R
SC/41/97	11.06.97	Albania	Statement at the opening plenary	E
SC/55/97	12.06.97	Czech Republic	Statement by Deputy Minister Karel Kovanda at the opening plenary	E
SC/57/97	12.06.97	Danish Chairmanship	Note on a meeting of private sector participants	E
SC/58/97	13.06.97	Danish Chairmanship	Proposed seminars for 1997/98	E
SC/59/97	13.06.97	Russian Federation	Draft Charter of the European Business Congress	E
SC/60/97	13.06.97	USA	Statement of an Ad Hoc Committee of Private Sector Delegates	E
SC/62/97	13.06.97	Ukraine	Keynote speech at the opening plenary	E
II. Working Group I - Coverage and Implementation of Economic Legislation				
SC/1/97	30.05.97	World Bank	The Settlement of Disputes	E
SC/12/97	11.06.97	Black Sea Economic Co-operation	"Food for thought" by Amb. Nurver Nures	E
SC/14/97	11.06.97	Slovak Republic	Fiscal Laws in the Slovak Republic	E

Ref. No.	Date	Author	Title/Subject	Lang.
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SC/15/97	11.06.97	Slovak Republic	Degree of approximation in respect of EU legislation in financial services	E
SC/16/97	11.06.97	Slovak Republic	Economic Conditions Concerning Investments, Customs, Taxes in the Slovak Republic	E
SC/19/97	11.06.97	Slovak Republic	Gegenseitige verstärkende wirtschaftliche Zusammenarbeit zwischen den Nachbarländern	G
SC/24/97	11.06.97	Poland	Polish Foreign Trade Policy in face of Challenges caused by Trade Liberalization under WTO	
SC/26/97	11.06.97	Poland	Changes in the Polish Legislation related to the Polish Accession to the OECD	E
SC/27/97	11.06.97	Poland	Regionalization and Globalization: Challenges for the Polish Foreign Trade Policy	E
SC/28/97	11.06.97	Poland	Information on the Economic Performance of Poland in 1996	E
SC/31/97	11.06.97	Council of Europe	Contribution to WG I, WS 2	E
SC/32/97	11.06.97	Council of Europe	Progress Report on the work of the Multidisciplinary Group on Corruption	E
SC/35/97	11.06.97	Central European Initiative	Statement by Amb. Hadziahmetovic	E
SC/44/97	11.06.97	Czech Republic	Competition Law and Policy in the Czech Republic	E
SC/45/97	11.06.97	Switzerland	Statement at WG I, WS 1	G
SC/46/97	12.06.97	Council of Europe	Statement at WG I, WS 2	F
SC/47/97	11.06.97	Holy See	Statement at WG I, WS 1	E
SC/48/97	12.06.97	Greece	Chairman's summary of a meeting of Ministers of Foreign Affairs of South-Eastern Europe, Thessaloniki, 9-10 June 1997	E
SC/51/97	12.06.97	USA	Statement at WG I, WS 3	E
SC/52/97	12.06.97	Bulgaria	Statement at WG I, WS 1	E
SC/53/97	12.06.97	Romania	Statement at WG I, WS 1	E
SC/61/97	13.06.97	Romania	Statement at WG I, WS 2	F
III. Working Group II - Accessibility, Transparency and Stability of Economic Legislation				
SC/21/97	11.06.97	Poland	Direct foreign investments In Poland	E
SC/22/97	11.06.97	Poland	The Polish Experiences in creating Market Economy	E
SC/42/97	11.06.97	World Bank	World Bank Experience with Judicial Reform in Borrowing Countries	E
SC/43/97	11.06.97	World Bank	The Role of Law in Business Development	E
SC/49/97	12.06.97	UN/ECE	The importance of the Rule of Law in Fostering Good Corporate Governance	E
SC/54/97	12.06.97	Romania	Statement at WG II, WS 1	E
SC/56/97	12.06.97	Uzbekistan	Contribution to the 5th EF	E

Ref. No.	Date	Author	Title/Subject	Lang.
IV. Other relevant documents				
SC/2/97	03.06.97	Denmark	Contribution by participants from the Danish private sector	E
SC/3/97/ Rev.2	12.06.97	Danish Chairmanship	Keynote speakers, moderators, rapporteurs, lead speakers and written contributions to the Working Groups	E

SC/4/97	05.06.97	UN/ECE	How to create a legal and regulatory framework for the private financing of public utilities in transition economies?	E
SC/5/97	06.06.97	International Labour Office	Labour law reforms in Central and Eastern Europe	E
SC/7/97	09.06.97	UN/ECE	Effective mechanisms for corporate governance in the transition economies	E
SC/8/97	09.06.97	International Monetary Fund	The Role of International Financial Institutions in Promoting Good Governance, including the Rule of Law, in their Member Countries	E
SC/9/97	11.06.97	OSCE Parliamentary Assembly	Parliamentary Conference "Sub-regional Economic Co-operation Processes: A Contribution to the New European Architecture	E
SC/10/97/ Rev.1	12.06.97	Secretariat	List of Participants	E
SC/18/97	11.06.97	Slovak Republic	Market Economy and the Rule of Law in the Slovak Republic	E
SC/23/97	11.06.97	SECI	Background information on the Southeast European Cooperative Initiative	E
SC/50/97	12.06.97	Latvia	Economic Co-operation in the Baltic Sea Region	E