

# UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT



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## **FINAL REPORT**

*for*

**Contract PCE-I-00-98-00013-00, Task Order 8**

## **Republic of Yugoslavia/Serbia – Program for Strengthening the Environment for the Growth of Private Enterprise**

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## I. INTRODUCTION AND BACKGROUND

The purpose of the Republic of Yugoslavia/Serbia Program for Strengthening the Environment for the Growth of Private Enterprise (PCE-I-00-98-00013-00, Task Order 8, or "the Project") was to provide technical assistance to the Government of the Federal Republic of Yugoslavia (the "GOY"), the Government of the Republic of Serbia (the "GOS"), and other relevant counterparts. The assistance was provided in a number of areas, such as:

- harnessing the expertise and experience of non-governmental organizations (NGOs) for targeted assistance in matters essential for the growth of the private sector;
- aiding the judiciary so that the commercial court system enforces, in an even-handed manner, rights and obligations, and protects creditors as well as debtors; and,
- creating a new method of securing payment, thereby promoting additional lending, creation of credit, and hence improved economic activity.

This activity supported USAID Strategic Objective 4.1 – Special Initiatives. The primary objective was to create a commercial law environment which supports investment by the private sector, protects property rights, assists in the development of a viable and secure banking system, and helps in rapid employment generation in the productive private sector. This activity was also closely coordinated with other USAID projects and other donor programs.

A multi-disciplinary team under this Task Order was mobilized in mid-April 2001. The team prepared an extensive review of the commercial law environment; established contacts with counterparts in the ministries, courts, NGOs, and legal community; and held two kick-off workshops in May with over 40 local stakeholders. Activities slowed when the Chief of Party resigned for personal reasons in mid-May 2001. During the next two months, while locating and fielding a replacement Chief of Party, consultants in the field and technical specialists from Booz Allen's home office continued to move the Project forward, holding workshops on collateral law, establishing a collateral law working group, assisting the Commercial Courts to create a Presidents' Council, and planning with the Judges Association of Serbia a large judicial conference for September for all Commercial Court judges.

In August, the long-term expatriate staff arrived in Yugoslavia – the new Chief of Party, Thomas Ehr, and Douglas Muir, a commercial law and legislation specialist. Full-time Project staff consisted of these two plus five local hires (Mira Ibrasimovic, Dragana Stanojevic, Milan Samardzic, Ivana Perovic, and Alexander Carapic).

The Project staff were in regular contact with local USAID staff by phone and e-mail, and met with local USAID counterparts in person at least once per week. A total of ten

monthly reports were provided, along with two quarterly reports (October 2001 and February 2002) describing progress to date. See Appendix 1 for copies of these reports.

The Task Order was originally scheduled to end on March 31, 2002. However, because of delays in awarding a follow-on project to another firm, the entire full-time Project staff continue to work under a no-cost extension for the month of April 2002. Two staff members (Doug Muir and Ivana Perovic) stayed on through the end of May 2002 under a further no-cost extension, intended to ensure effective coordination with the follow-on project. Effective May 13, 2002, the other staff members all transferred to the follow-on "Economic Policy for Economic Efficiency" Project, implemented by PricewaterhouseCoopers.

USAID's Scope of Work listed six specific tasks for the Project. All of these were completed.

## II. TASK A. GRANTS TO NON-GOVERNMENTAL ORGANIZATIONS (NGOs)

This Task required us to “identify NGOs that have expertise and experience in areas addressed under this Task Order... decide, in conjunction with USAID, which NGOs can be engaged through grants by the Contractor to perform services hereunder... (and) engage NGOs to perform such services.” This Task continued throughout the entire period of the project, and overlapped with the other five Tasks.

Modification One to the Task Order added that “in regard to subgrants and subcontracts, the Task Order permits both, but only with the concurrence of the Mission with each subgrant or subcontract.” Booz Allen used firm fixed price subcontracts for defined deliverables, rather than grants, to provide funding to Serbian NGOs. Booz Allen obtained approval from the USAID Mission in Belgrade and from the Task Order Cognizant Technical Officer (CTO) and Contracting Officer (CO) prior to concluding each subcontract.

### Benchmarks:

#### 1. Meet with various NGOs to ascertain their ability and interest in performing work under this task order.

**Completed.** Beginning with the mobilization of the original team in April 2001, Project staff members met and explored possible collaborative efforts with a wide variety of NGOs working in areas covered by this Task Order. These NGOs included:

- **G17.** A very prominent economic and legal NGO, G17 focuses on “the promotion and practical implementation of the ideas of a modern market economy, open democratic society, and the rule of law.”
- The **Judges Association of Serbia (JAS)**. A professional association of Serbian judges founded in April 1997, JAS pursues the development of an independent judiciary.
- The **Economics Institute (EI)**. Another prominent local NGO, EI conducts “research activities ... based on a multi- and inter-disciplinary approach which [is] consistent with the rapidly growing complexity of the economic and social environment in the contemporary world and its globalizing structure.”
- The **League of Experts (LEX)**. LEX “provides interdisciplinary expert support and assistance in the building of future democratic civil society, legal state, and modern market economy.”
- The **Center for Liberal Democratic Studies (CLDS)**. CLDS was “founded to promote democracy, individual liberty, free market economy and economic development, the rule of law, and responsible and limited government.”
- **Fractal**. A youth NGO, Fractal is “working toward the economic and political integration of young people across the former Yugoslavia.”

- **Vojvodjanka, the Regional Women's Initiative, and the Association of Novi Sad Businesswomen.** These three NGOs work toward greater participation of women in economic issues.
- The **Institute of Comparative Law.**
- The **Serbian Jurists Association.**
- The **Belgrade Bar Association.**
- The **Yugoslav Chamber of Commerce.**
- **B-92** (independent TV/radio).

## **2. Present findings (on NGOs) to USAID.**

**Completed.** The Project team's preliminary findings were included in our Diagnostic Assessment (see Task F below). The team continued to bring significant new findings and intentions – meetings and proposed contracts with new NGOs, new contracts for previously contracted NGOs, ongoing relationships with NGOs, etc. – to USAID's attention via email, monthly reports, and weekly meetings.

## **3. Within 30 days of mobilization, engage such NGOs.**

**Completed.** The Project identified, consulted, and worked with NGOs in the legal and economic fields in Serbia in an effort to engage NGOs in constructive and meaningful ways to advance commercial law reform.

The first subcontract signed with a Serbian NGO supported the Judges Association of Serbia (JAS) in funding its annual conference of Commercial Court judges in September 2001. The Project then subcontracted with G-17 Institute to conduct a survey of company registration practices in autumn 2001.

Throughout autumn 2001, the Project also communicated extensively with all relevant actors in the commercial law reform field (governmental, nongovernmental, academic, etc.) on how best to further the reform process through work with NGOs. The consensus was that a series of seminars and roundtables was necessary to explore issues in depth, bring stakeholders together from all sectors, and make the process more inclusive. The Project then worked with a variety of NGOs (including G-17, the Economics Institute, and the Center for Liberal Democratic Studies (CLDS)) on proposals for roundtables. Topics included secured transactions, registries, collateral lending, women's access to credit, commercial arbitration, corporate governance, bankruptcy, electronic signatures, and company law.

These proposals, representing a major comprehensive initiative in commercial law reform in Serbia, were submitted to USAID for approval in February 2002, and

subcontracts were signed with NGOs in March and April 2002 on those proposals approved by USAID.

The Project concluded a total of 11 subcontracts worth \$115,671.93 with seven Serbian NGOs.

**1) Judges Association of Serbia, Annual Conference for Serbian Commercial Court Judges (JAS-1), \$27,022.93.** This subcontract supported the Judges Association of Serbia (JAS) in funding its annual conference of Commercial Court judges, which was held in Zlatibor in September 13 through September 26, 2001. The Commercial Court Judges Conference brought together 225 of the 250 Commercial Court judges in Serbia, as well as many court administrators and employees, for what arguably was the first true professional gathering of its kind. (Past conferences under President Slobodan Milosevic reportedly were used by the Ministry of Justice to reward particular judges for political support, and were not necessarily exercises in professional development.)

Highlights included roundtables and reports thereof, chaired by judges, on substantive commercial law topics; presentations on collateral systems by a practicing attorney and a renowned economist; a keynote address on combating corruption by the Managing Director of Transparency International; and introductory comments by Spike Stephenson, USAID Mission Director, on the critical need for the rule of law and an independent judiciary in Serbia, and the Federal Republic of Yugoslavia. A complete report is attached in Appendix 2.

**2) G-17 Institute, Company and Small Enterprise Survey (G17-1), \$5,000.** The Project subcontracted with G-17 to conduct a survey of the Commercial and Municipal Courts in Serbia with regard to the registration of companies. G-17 conducted a survey in November and December 2001 of all Commercial and Municipal Courts in Serbia to gather data and information regarding the entire registration process. The goal of this effort was to use the information and data collected to design an initiative to improve the registration process, and make it more predictable, transparent, and accessible. While others had gathered much information from the company perspective, this was the first attempt to gauge the process from the judicial side of the equation. While G-17's original survey was a good first attempt, it did not achieve comprehensive coverage, and results were not properly collated and presented. The Project worked extensively with G-17 to improve the analysis and presentation of the survey findings. A copy of the revised survey report is attached in Appendix B.

**3) G-17 Institute, Roundtable on Registries (G-17-2), \$6,155.00.** The Project subcontracted with G-17 to organize a roundtable to address and assess outstanding issues regarding all types of registries, laying the foundation for drafting a new law on non-possessory pledges on movables and registries, including a revision of existing regulations pertaining to this field. The roundtable was held at G-17's offices in

downtown Belgrade on March 29. Approximately 70 people attended, including legislators, judges, high-level civil servants, and foreign donors. Presenters included Mladjan Dinkic, Governor of the National Bank of Yugoslavia; Dragor Hiber, Member of Parliament and law professor; Ruzica Stamenkovic, special advisor to ZOP (the Payments Bureau) and President of the Solvency Registry; and Judge Mirjana Trninic, head of the registry department in the Commercial Court of Belgrade. Robert Sepi of Strategic Marketing presented the G-17 survey of company registries (referred to above). The conference lasted all day, and was covered by both print media and television. A copy of a Project staff member's report on the roundtable is attached in Appendix B.

**4) Center for Liberal-Democratic Studies, Competition Policy Study (CLDS-1), \$20,000.00.** The Project subcontracted with CLDS to examine in depth the overall economic and legal situation in Yugoslavia, assessing the existing competition law and institutions and making recommendations for measured progress and development. The primary author was Boris Begovic, law professor and former special advisor to Federal Minister for International Economic Relations Miroljub Labus. Due to delays in completing the report, a planned press conference coinciding with its release was postponed until after the Project's period of performance, and the final payment tranche of \$2,159.13 was cancelled by mutual agreement between the Project and CLDS. A electronic copy of the final book is attached in Appendix B, and hard copies are available through either Booz Allen or CLDS.

**5) Economics Institute, Roundtable on Secured Transactions (EI-1), \$11,200.00.** The Project subcontracted with the Economics Institute to provide a three-day roundtable on secured transactions to raise awareness and foster concrete initiatives in drafting a new law on secured transactions. The roundtable was held from March 26 through March 28. Mr. Iliya Drazic, Special Consultant to Serbian Minister of International Economic Relations; Ms. Jelena Perovic, Special Advisor to Serbian Minister of International Economic Relations; and Mr. Milan Parivodic, a local attorney and law professor, were the moderators. Approximately 70 people attended. The conference generated a great deal of interest, but it was somewhat handicapped by the absence of a draft secured transactions law. A second draft of the law did exist at that point, but a representative of the Serbian Ministry of Foreign Economic Relations refused to distribute it, and attendees had to be satisfied with hearing excerpts from the draft read out loud.

**6) Economics Institute, Roundtable on Commercial Arbitration (EI-2), \$6,700.00.** The Project subcontracted with the Economics Institute to organize two roundtables on commercial arbitration. These roundtables presented the legal framework underlying international commercial arbitration, international conventions, codes of civil procedure, the rules of Yugoslav Foreign Trade Court arbitration, and other substantive arbitration principles. The roundtable was held April 9 and 10 at the EI offices in

Belgrade. Approximately 40 people attended, mostly judges, attorneys, and members of the Belgrade University Law Faculty. Ms. Jelena Perovic, the Special Advisor to Serbian Minister for International Economic Relations (MIER) Goran Pitic, chaired.

**7) Economics Institute, Workshop on Creating a Business-Friendly Environment (EI-3), \$9,000.00.** The Project subcontracted with the Economics Institute to support a three-day workshop organized by EI in conjunction with the Belgrade office of Southeast Europe Enterprise Development (SEED), a multi-donor initiative managed by the International Finance Corporation (IFC). The aims of the workshop were to underscore the importance of establishing a more efficient and market-friendly environment, and to elicit concrete solutions aimed at constituting a new, comprehensive, and streamlined mechanism of improving the local regulatory environment for businesses. The workshop was held April 10 and 11 at the Hyatt Hotel in Belgrade. Over one hundred people attended.

**8) Economics Institute, Workshop on Corporate Governance (EI-4), \$6,700.00.** The Project subcontracted with the Economics Institute to organize a workshop aimed at critically re-examining the Yugoslav legal system in the area of corporate governance and offering plausible solutions for more effective and transparent corporate governance principles. The workshop was held April 23 and April 24 in the EI offices in Belgrade, and was attended by 45 people, including representatives of Commercial Courts, the High Commercial Court, the Supreme Court of Serbia, the National Bank of Yugoslavia, private banks, donor organizations, Serbian NGOs, and the media, as well as private sector attorneys.

**9) Fractal, Survey of Awareness of and Attitudes toward Secured Transactions (Fractal-1), \$9,994.00.** The Project subcontracted with Fractal to study and ascertain the levels of awareness, understanding, and acceptance of secured lending notions and practices by examining three different regions in Serbia. The survey was commissioned so that USAID could understand exactly what people know, and don't know, about secured lending, and their attitudes toward the concept, as a fundamental starting point for a public education effort. Fractal is a relatively new NGO with only six employees from the ranks of former student leaders of the opposition and new Serbian economists, none over 25 years of age. It was selected specifically to ensure that the Project not only funded the established, older NGOs of Serbia, but also nurtured and built the capacity of new, dedicated, and ambitious NGOs. Project staff members spent significant time and effort analyzing Fractal and its staff to confirm that it possessed the experience and capacity to successfully complete the initiative. Fractal conducted its survey in March and April 2002, interviewing and surveying over 1,300 people, including consumers, entrepreneurs, businessmen, and civil servants, in three different locations in Serbia. They also organized a roundtable on their finding, but the roundtable was very lightly attended, with only 10 people in attendance. This seemed to be because Fractal, as a small and new NGO, simply could not attract the same number and quality of

participants as the G-17 Institute or the Economics Institute. Fractal did very solid work generally, and Project staff recommended using them again, but not for hosting roundtables or large conferences. A copy of their final report is attached in Appendix B.

**10) League of Experts, Roundtables on Bankruptcy (LEX-1), \$7,000.00.** The Project subcontracted with the League of Experts (LEX) to organize two roundtables on the topic of bankruptcy in Serbia and Yugoslavia. The roundtables were aimed at analyzing the level of compliance of Yugoslavian bankruptcy provisions with the international legal standards in this area, and to produce specific solutions for insertion into the new Bankruptcy Law. The first roundtable was held March 22 in Vecej, with approximately 40 judges, including representatives from all but one of the Commercial Courts of Serbia, in attendance. The moderator of this first roundtable was Ms. Jelisaveta Vasevic, former High Commercial Court judge and a member of the working group drafting the new law on bankruptcy. The second roundtable was held for bankers and bankruptcy trustees in the Commercial Court of Belgrade on April 19. A copy of a Project staff member's report on the second roundtable is attached in Appendix B.

**11) Vojvodjanka - A Regional Women's Initiative, Women's Access to Credit Initiative (Vojvodjanka-1), \$6,900.00.** The Project subcontracted with a Novi Sad-based NGO named "Vojvodjanka - A Regional Women's Initiative" to head a research and public education effort to assess the extent to which female entrepreneurs in Serbia have access to credit. In this effort, Vojvodjanka cooperated with the STAR Network of World Learning and the Novi Sad Association for Businesswomen to analyze the conditions for women to obtain credit from banks and other lenders; examine the legal solutions available to women within the existing legal framework; research the experiences of other transition countries with programs for the development of female entrepreneurship; and, present their findings in two roundtables. The two roundtables were hosted in April: one in Belgrade on April 15, and one in Novi Sad on April 17. Both were very well attended, with some 50 participants each, and both received extensive media coverage. One interesting side effect of the Women's Access to Credit Initiative was to persuade the Bureau of Statistics to begin tracking entrepreneurs and small- and medium-scale enterprises (SMEs) by gender. The requests for information from the Project and the NGOs, combined with some discussions at the Deputy Minister level, convinced the leadership of the Bureau of Statistics that this was a good idea. Vojvodjanka's reports on their survey results and on their roundtables are attached in Appendix B.

The Project also rejected numerous proposals for grants or subcontracts. Most notable among these rejections were:

**1) Support Grant for the Judges Association of Serbia (JAS):** The Project worked extensively with the JAS in their efforts to prepare a grant proposal for building capacity within the JAS. However, JAS contacts were unable to focus sufficiently due to their press of work, their concern with political removals of judges, the new laws on the courts and judiciary, and their uncertainty over the future of the JAS vis-à-vis the new Judicial Training Center (JTC). (See Task B below.)

**2) League of Experts (LEX) Roundtable on the Law on Enterprises:** The Project originally subcontracted with LEX to organize roundtables to address the Yugoslav Law on Enterprises and its reform process. However, because the Project was not fully satisfied with the quality of LEX's roundtable on bankruptcy (LEX-1), and because Economics Institute was organizing a workshop on a similar topic (EI-4, Workshop on Corporate Governance), the Project cancelled the subcontract.

**3) Economics Institute (EI) Website for Monitoring and Reporting on Commercial Law Reform:** In consultation with Serbian Ministry of International Economic Relations (MIER) officials and others, the Project designed an initiative with the Economics Institute to launch a Commercial Law Reform Website. Through this initiative, the Economics Institute, in association with its existing monthly publication the *Economic Indicator*, would have created a website serving as a kind of commercial law reform information clearinghouse. The proposed website would have included a constantly-updated Legislative Matrix; downloadable texts of current laws and new proposals; analyses of existing laws and new laws provided by donors, NGOs, and other interested parties; articles submitted by government officials, private sector experts, and others on various aspects of commercial law reform; and, a forum for debate and discussion (scheduled internet chats on specific topics, message boards, etc.) open to all. This proposal was rejected by USAID counterparts due to their judgment that sufficient web-accessible resources exist to meet the needs targeted by this proposed website.

In sum, the Project made "all reasonable, good-faith efforts to utilize the services of NGOs by way of grants [or subcontracts] totaling all of the funds budgeted for such purposes." While the total amount of funds originally set aside for this purpose were not fully expended, the Project dedicated extensive resources, time, and effort to identify and fund proposals relevant to the Project from those NGOs that were capable of delivering good-quality products.

### **III. TASK B. JUDICIAL TRAINING**

This Task required the Project to develop a series of “training events” to further the knowledge and skills of Commercial Court judges. The Task continued throughout the entire period of performance. The Project also provided other training and public education events which were open to judges, government officials, members of Parliament, and representatives from NGOs, the private sector, and the media.

#### **Benchmarks:**

#### **1. Within 10 days of mobilization, begin meetings with various counterparts.**

**Ongoing throughout the Task Order period of performance.** Project staff met continuously with all players and stakeholders in the area of judicial training, including the Assistant Minister of Justice for the Republic of Serbia; the Judges Association of Serbia (JAS); individual judges, including the President of the Supreme Court of Serbia; other USAID-funded projects, including ABA-CEELI; the Faculty of Law at the University of Belgrade; donor agencies, including the Organization for Security and Cooperation in Europe (OSCE) and the United Nations Development Program (UNDP); and numerous others.

#### **2. Within 30 days of mobilization, prepare and submit to USAID for approval a training plan that identifies key elements.**

**Completed.** Following the completion of a survey of judicial training needs, the Project submitted a draft training plan to USAID in November 2001. (See Appendix 3.) This plan met the stated objectives and priorities and was approved by USAID in that same month.

In the survey, the Commercial Court judges had indicated a need for help with many commercial law issues, but in particular with bankruptcy and bankruptcy-related issues. The judges felt overwhelmed and feared that they were not addressing bankruptcy issues competently or effectively because of the marked increase in the number of bankruptcies in the last two years, problems with the bankruptcy law itself, and the judges’ general lack of a firm grasp of the basic principles of bankruptcy law and practice.

The Project recommended, and subsequently pursued, a two-track, three-pronged approach to judicial training. By providing training in association with the JAS, along with initiatives designed to bolster the institutional capacity of the JAS, the Project aimed to create substantive gains in judicial knowledge and skills and to increase the sense of a professional community of Commercial Court judges. These efforts included

formal professional development activities, informal professional development activities, and information dissemination and public awareness activities.

With USAID's knowledge and input, judicial training largely focused on the immediate needs of judges given rapidly moving developments in the area of bankruptcy. However, numerous other training events on other topics were also provided. The audiences invited to such events included other members of the legal profession; law students; representatives of government, the private sector, and NGOs; members of Parliament; and the media.

**3. Conduct training on significant new or revised commercial laws enacted during the period of performance.**

**Completed.** Unfortunately, only one significant commercially oriented law, the Law on Foreign Investment, was passed during the Task Order's period of performance. However, the Project did promptly conduct training on this law. A roundtable for Commercial Court judges was held on March 11, 2002 to present the new law to the judges and discuss its impact upon the commercial reform process.

In the absence of new commercial laws, the Project thus focused its training on the rapidly developing area of bankruptcy, and also provided training on company registration, banking and privatization issues, anti-bribery, and the World Trade Organization (WTO), in addition to the variety of commercial law issues addressed at the Project-supported Annual Commercial Court Judges Conference (held in Zlatibor September 23-26).

**4. A minimum of 20 such training events shall be held in Serbia. At least half of the training events shall be held in cities outside of Belgrade, so that relevant stakeholders from all of Serbia can benefit from these programs.**

Please see the attached table summarizing the Project's training events in Appendix 3. As shown in the table, the Project organized or provided support for a total of 39 training events in nine different locations (Becej, Belgrade, Leskovac, Nis, Niska Banja, Novi Sad, Valjevo, Vrsac, and Zlatibor). These training events were attended by approximately 1,550 participants. Judges attended 29 of these 39 events, and comprised 50% or more of the total participants in 20 events.

The Project made a particular effort to have judges from as many Commercial Courts as possible present at all its events, and supported their travel and other expenses in this effort. For example, three events (the JAS Annual Commercial Court Judges Conference in Valjevo, the roundtable on privatization and company registration in Vrsac, and the roundtable on the new Law on Foreign Investment) included at least one judge from

each of the Commercial Courts in Serbia, and several others included judges from all but one or two of the Commercial Courts.

Twelve of the 39 training events, and eight of the 20 events attended primarily by judges, were held outside of Belgrade. Of the 12 training events attended primarily by judges that were held in Belgrade, nine were attended by judges from outside Belgrade. Judges from outside Belgrade comprised the majority of judges in attendance at four of these Belgrade events.

**5. Course materials shall be developed in Serbian and English language that address at least four important areas of economic or commercial law.**

**Completed.** The Project provided or supported training on:

- 1) Collateral law and secured transactions
- 2) Bankruptcy (including bank bankruptcy, bankruptcy case management, privatization through bankruptcy, and enforcement of the Law on Compulsory Composition, Bankruptcy, and Liquidation)
- 3) Registration of companies
- 4) Anti-bribery issues
- 5) WTO accession
- 6) Anti-monopoly law
- 7) Public procurement
- 8) Law on Foreign Investment
- 9) Intellectual property
- 10) Commercial arbitration
- 11) Execution of judgments
- 12) Corporate governance

All of these involved printed training materials, and several of them required the creation of long and detailed training documents, both in print and electronic media.

**Additional Comments on Judicial Training: The Search for an Institutional Counterpart**

From the outset, the Project encountered difficulty in establishing a formal professional development program for the judicial community in Serbia. The Project's initial counterpart in these efforts was the Judges Association of Serbia (JAS). At the outset of the Project, the JAS was an NGO in transition. Until 2001, the JAS had no actual power and very little administrative capacity. However, during 2001, the JAS reorganized itself, became increasingly activist, and began to show a willingness to challenge the Republic of Serbia Ministry of Justice and assert the independence of the judiciary.

The Project's largest single judicial training effort was supporting the JAS Annual Commercial Court Judges Conference, which took place in Zlatibor September 23 through 26. The Conference brought together 225 of the 250 Serbian Commercial Court judges, plus many court administrators and employees. Highlights included roundtables, chaired by judges, on substantive commercial law topics; presentations on collateral systems by a practicing attorney and a renowned economist; a keynote address on combating corruption by the Managing Director of Transparency International; and, introductory comments by Spike Stephenson, USAID Mission Director, on the critical need for the rule of law and an independent judiciary in Serbia and the Federal Republic of Yugoslavia. The Zlatibor conference was, among other things, a capacity-building exercise for the JAS, through which it showed some effective organizational ability.

The JAS Commercial Law Section also sponsored a series of informal roundtables for judges, where high-priority topics of relevance to the Commercial Court judges could be discussed and experiences and views could be shared. Towards the end of the Task Order period of performance, the JAS also began to generate some original work product. The Project encouraged JAS to produce opinions on laws and decrees directly relevant to judicial administration, and in April 2002 JAS' Managing Board announced that by June 30 it would produce an opinion on the new law on litigation. This was a first; JAS had never commented on a law before, nor had any other Serbian organization of judges.

However, the JAS continued to be hampered by limited capacity, budget, and staff. The JAS leadership did not seem to have a clear vision of where the organization was going. There was also some evidence that the JAS was becoming marginalized. They have not been offering projects to the donor community, and their training program, while popular and successful, existed primarily through the funding and efforts of the Project.

The other primary candidate as an institutional counterpart for the judicial training effort was the fledgling Judicial Training Center (JTC). The JTC seemed, at first glance, to be the most suitable candidate. It was planned to be a semi-independent body, funded in part by the Yugoslav government but run by a board including representatives from the judiciary (the Presidents of the three highest Serbian courts), foreign donors, local NGOs, and the private sector. The Soros Foundation contributed approximately \$45,000 to cover startup costs, while ABA-CEELI assisted in the preparation of a tentative curriculum. Dutch and Swedish donors committed approximately \$1.7 million to support its operations, and the OSCE and UNDP provided a three-year guarantee of foreign donor funding.

However the JTC never became fully viable during the Task Order period of performance. The Republic of Serbia Ministry of Justice, which has administrative authority over the JTC, did not show much enthusiasm for, or even a firm commitment

to, the JTC until the close of 2001. It had neither completed its official registration nor provided office space as intended when it held an opening ceremony attended by various donors in December 2001. The JTC was not registered until January 2002, with Judge Leposava Karamarkovic, the President of the Supreme Court of Serbia, as the formal head and Judge Dragisa Slijepcivic as the head of the JTC Commercial Law Division. On April 2, the JTC's Managing Board selected Ms. Natasha Rasic-Igniatovic, a local attorney, as the Executive Director. However, although the Ministry provided the JTC an entire building for office space, the building in question (Karadjorjeva 48) is in a very run-down neighborhood on the edge of Old Belgrade, needed comprehensive renovation prior to occupation, and had some contested issue regarding its land registration filing. As of the end of May 2002, the JTC still had no full-time administrative staff, no independent budget, no functioning offices, and no ability to actually provide training, though it was in the process of acquiring all these things.

As of May 2002, the JAS and the JTC were undertaking some joint activities. With Project assistance, the JAS organized a meeting on April 26 at the Supreme Court of Serbia, at which Project staff and judges began to devise a draft training curriculum for Commercial Court judges and assistants. This draft training curriculum is to be vetted by representatives from all Commercial Courts in Serbia, as well as by the JAS' Program Council. This Council is chaired by Serbian Supreme Court Judge Dragisa Slijepcivic, who is also the head of the Commercial Law Division at JTC and the Project's main training counterpart.

The JAS also committed to generating a set of formal, official recommendations to the JTC on "modes and methodologies needed for professional development, and also priorities for training." In theory, every section of the JAS should generate a complete training plan, which would be incorporated into the recommendations, although in practice, this is not likely to happen. Project staff encouraged the JAS to review its members' needs from the bottom up, as the JAS annual meeting in April 2002 made it clear that many member judges do not think that their voices are being heard.

Project staff expect the JTC to gradually supplant the JAS as USAID's primary local counterpart for judicial training. The long-term prospects for the JAS were, at the close of the Task Order period of performance, somewhat murky. The organization was certainly much stronger than when the Project began working with it in mid-2001. The JAS 2002 annual meeting showed that there was still a great deal of interest in the organization among the judges, even if many of them were dissatisfied with its performance to date. However, some of the same people are deeply involved in both the JAS and the JTC. Once the JTC becomes fully functional, the JTC will probably easily take over the judicial training functions of the JAS. The JAS may not even object to this, as it has other interests besides training - lobbying for higher judicial salaries, for instance. For the near future, though, the JAS still has a role to play.

#### **IV. TASK C. BOLSTERING NON-GOVERNMENTAL ORGANIZATIONS (NGOs)**

Task C was a catch-all Task, by which the Project was authorized to use NGOs as focus groups, sounding boards, publishers of educational materials, etc. The Project's collaborations with NGOs are detailed above in Task A.

##### **Benchmarks**

- 1. Within 10 days after agreeing with USAID as to collaboration with an NGO, we should prepare and provide a workplan that defines the terms and conditions of any assistance provided, and the specific outputs, deliverables, and performance indicators against which results will be measured. This workplan will reflect agreement on such terms and conditions between the Contractor, USAID, and the NGO.**

**Completed.** As described in Task A above, each performance-based NGO subcontract was approved by USAID, and included specific outputs and deliverables, deadlines for each, and a description of the results of the subcontract.

- 2. At least three NGOs will be involved in the collaboration to be provided under Task C, to cover at least three different activities.**

**Completed.** As described in Task A above, 11 different subcontracts involving 11 different activities and eight different NGOs were completed during the Task Order period of performance.

## **V. TASK D. PROVISION OF EXPERTISE TO LEGAL “WORKING GROUPS” AND OTHER LEGAL DRAFTING GROUPS**

- 1. Within 10 days of mobilization, contact specific ministries, courts, Parliament, and other governmental organizations to identify which commercial laws are being drafted or are in the legislative process.**

**Completed, and continuous throughout the Task Order period of performance.** See below.

The Project also provided specific analysis and advice on particular commercial law reform issues, in the form of detailed reports by respected international experts. For example, the Project produced reports on:

- the importance of a secured financing law for the Federal Republic of Yugoslavia, by Yair Baranes (Appendix 4.1);
- the Compulsory Composition, Bankruptcy, and Liquidation Law, by Milo Stevanovich (Appendix 4.2);
- the draft Yugoslav Law on Electronic Signatures, by the law firm Steptoe and Johnson (Appendix 4.3);
- the Yugoslav Law on Enterprises, by Thomas Jersild (Appendix 4.4);
- the immovable property cadastral and registration system of the Republic of Serbia, by Ivan Ford (Appendix 4.5);
- the institutional and legal framework of Yugoslavia's capital market, by Erik Huitfeldt (Appendix 4.6); and,
- the compatibility of the draft Serbian Law on Concessions with WTO rules, by Christopher Corr (Appendix 4.7).

- 2. Keep USAID informed of all important “working groups” drafting or reviewing commercial law, and make specific recommendations how USAID can support them. Offer and provide technical assistance.**

**Continuous throughout the Task Order period of performance.** See below.

The Project promoted and pursued the formation of legal drafting groups in areas including the Collateral Registry, Bankruptcy, and Company Laws, and worked in a liaison capacity to ensure that the proper Serbian government officials were included in certain Federal working groups. In addition, Project staff members participated in meetings of the working group on Concessions Law and served on the working groups on Secured Transactions and Collateral Registry. The Project's Bankruptcy Advisor, Mr. Milo Stevanovich, was invited to participate in the Federal Bankruptcy working group. The Project also provided expert advice on the Federal Ministry of Justice's draft of a new Law on Electronic Signatures.

The Project made additional offers of technical assistance and support to working groups responsible for drafting or amending the laws on Bankruptcy, Company, Competition, Commercial Arbitration, Securities, and Investment Funds. At the end of the Task Order period of performance, most of these offers either were obviated by lack of action on the part of the Serbian government, or were awaiting approval or further governmental administrative action. The follow-on EPEE project may provide at least some of this assistance.

As an element of the offers of assistance to the drafting groups on Bankruptcy and Company Law, the Project also arranged for comprehensive analyses of both laws and detailed recommendations for legislative (and administrative) improvement.

The Project also made a special effort to better inform all actors in the commercial reform process, including the international donor community, of the status of commercial law reform initiatives. Beginning in September 2001, the Project developed a Matrix of Commercial Law Reform. The Matrix was designed to give as much detail as possible regarding the status of specific laws being drafted or amended, including names and contact information for drafting group members, names of technical assistance providers, and prognoses. The Chair of the international donors group wrote that the Project's Matrix was "the best of all papers meant for information and coordination we have seen," which should "facilitate both our internal donor coordination and the talks with our counterparts on the federal and republican level."

The Project continued to update the Matrix regularly, and to disseminate the updates every month to all commercial law reform actors, through April 2002. The follow-on EPEE Project is now carrying on with the monthly updates. A sample matrix (from April 2002) is attached as Appendix 4. 8

## VI. TASK E. COLLATERAL LENDING

### 1. Within 15 days of mobilization, meet with the Ministry responsible for drafting and proposing a collateral law, and offer technical assistance.

**Completed.** The initial meeting with the Serbian Ministry of International Economic Relations (MIER) took place in May 2001. Minister Goran Pitic informed the project that the Ministry had already been contacted by the European Bank of Reconstruction and Development (EBRD), and was planning to work closely with them. The Minister wanted EBRD to be the primary foreign counterpart, but suggested that EBRD, USAID, and Booz Allen should work out an arrangement for dividing the assistance. On USAID's behalf, Booz Allen negotiated a Memorandum of Understanding with EBRD in June 2001. (See Appendix 5.1 for a copy of the Memorandum of Understanding.)

### 2. Within 90 days, hold a series of at least five training activities to inform stakeholders about secured transactions generally and how a centralized collateral registry functions.

**Completed.** A total of eight such events were held:

- May 9, Workshop on Diagnostic Assessment Findings
- May 10, Workshop on Diagnostic Assessment Findings on Judicial System
- May 22, Presentation on Collateral Law at Commercial Lawyers Association
- June 27, Seminar on Collateral Law Development, Enforcement, and Registries
- September 23, Presentation on Collateral Law at the Judges Association of Serbia (JAS) Annual Commercial Court Judges Conference in Zlatibor
- February 27-28, Judicial Roundtable on Secured Transactions
- March 26-28, Economics Institute Roundtable on Secured Transactions
- April 22 and 27, Fractal Roundtables on Popular Attitudes towards Secured Transactions

### 3. Within 120 days of mobilization, produce and have published three articles on secured transactions in local language publications.

**Completed.** *Privredni Pregled*, the Yugoslav commercial newspaper, published an article on November 27, 2001, concerning the work of the Project in general, and secured transactions in particular. The Project also arranged an interview between Frederique Dahan of EBRD and *Privredni Pregled*, which was published on December 8, 2001. A longer article appeared as a "special insert" in *Privredni Pregled* in March 2002 that generated a great deal of attention and active discussion, especially in the legal community. An article by local attorney Ms. Rajna Andric was published in *Ekonomist* in May 2002. These articles discussed the present state of secured transactions law, speculated on possible changes, and offered a draft form legal form for practitioners.

Ms. Vesna Vasarovic, a professor at the Belgrade University Faculty of Law, was writing a much longer Serbian language article on this topic. The Project encouraged Ms. Vasarovic to produce a scholarly, law-review quality piece on this topic, and provided her with research assistance as needed. However, this article was not completed by the end of the Project's period of performance.

In addition, Project consultant Yair Baranes wrote a short English-language article on secured transactions in Yugoslavia, which appeared in the December 2001 issue of the International Bar Association's *Eastern European Forum* newsletter.

**4. Within 180 days of mobilization, working with the appropriate Ministry, present a draft law on Collateral Lending, as well as suggested revisions to other relevant laws which relate to Collateral Lending.**

**Completed.** Eufrona Snyder and Doug Muir produced a draft law, which was presented to the Republic of Serbia Ministry of International Economic Relations (MIER) and other interested parties in October 2001. (See Appendix 5.2.) The Project also prepared draft registry regulations in March 2002.

**5. Obtain and incorporate the views of all relevant stakeholders into a detailed analysis of the most appropriate design of modern system of property registries in Serbia. This analysis shall be submitted to USAID for discussion, refinement, and, as appropriate, publication.**

**Rendered moot.** Due to the fact that the Serbian Minister for International Economic Relations Goran Pitic wanted EBRD to be the primary foreign counterpart on collateral lending, this responsibility was assigned to EBRD through a Memorandum of Understanding between the Project and EBRD, with the concurrence of USAID. Unfortunately, the drafting of the secured transactions law was not completed until after the Task Order period of performance, so the Project did not find counterparts prepared for detailed discussion of the structure and design of the collateral registry system. The Project did:

- submit a draft registry law (in October 2001) and draft registry regulations (in March 2002) (see #4 above and Appendix 5);
- hold conferences to get stakeholder input;
- meet with all relevant players, including the head of the relevant Parliamentary committee, to get concurrence and support of the general idea of the secured transactions law and the collateral registry system;
- identify the most likely candidate to host the registry (the Solvency Center at the State Payment Bureau, or ZOP) (see Appendix 5.3); and,

- with USAID's consent, conducted a review of the system for registration of real property (see the report by Ivan Ford in Appendix 4).
- 6. Within 10 days of receipt of USAID's approval to release the report and recommendations, the Contractor shall supply the same to the Ministry responsible for the legislation. However, it will not be the responsibility of the Contractor to provide technical assistance for the establishment of the Collateral Registry (or the responsibility of USAID to fund the establishment of the Collateral Registry). However, the Contractor will be expected to help the Ministry find an organization which will establish, or assist in establishing, the Collateral Registry.**

**Rendered moot.** See #5 above.

- 7. Use all reasonable efforts to assist the Ministry, and Parliament, in advancing the draft law through Parliament to enactment.**

**Completed.** The Project did indeed make all reasonable efforts, but at the end of the Task Order's period of performance, the law still had not passed through Parliament for numerous reasons not under the Project's control. The Project monthly reports (provided in Appendix 1) describe the Project's efforts with its counterparts at the MIER and EBRD in detail.

- 8. Use NGOs for technical assistance related to collateral lending.**

**Completed.** The slow pace of drafting made it difficult to use many NGOs. However, the project did use Fractal to do a survey of attitudes towards secured lending. This was completed in March 2002, and submitted to local counterparts and USAID. The Economics Institute also conducted a roundtable on secured transactions March 26-28, 2002. (See Task B above.)

## VII. TASK F. LONG-TERM STRATEGY DEVELOPMENT

### **Benchmarks:**

- 1. Within 60 days of mobilization, prepare an in-depth analysis of the current state of development of the legal and institutional environment for commercial law activity in Serbia.**

**Completed.** Booz Allen's team wrote a Diagnostic Report on the commercial law environment in Serbia. The Diagnostic was completed on June 1, 2002, and is attached as Appendix 6. A formal presentation was made to USAID and to U.S. Embassy staff on August 14.

## VIII. LESSONS LEARNED

**Judicial training is a delicate subject.** Project staff quickly realized that Commercial Court judges in Serbia are conservative, face an uncertain future individually, and generally are adverse to traditional concepts of “training” or “education.” Therefore, judicial training events could not be called by that name. Instead, they were styled and marketed as “interactive professional development.” In promoting the training, Project staff emphasized that these were opportunities for judges to continue their professional development by learning about new or “cutting-edge” issues (or those issues the judges themselves identified as being of interest), rather than “remedial” initiatives to correct past errors or shortcomings.

**Promote the development of the professional judicial community.** At the outset of the Project, the Serbian judiciary as a whole, and Commercial Court judges in particular, were “atomized” and had lost most of any sense of professional community they may have once shared. The judicial profession was tarnished during the Milosevic regime in particular. Judges in Serbia are poorly paid, and the public opinion of judges is not high. The judicial training events provided an opportunity for judges to discuss their experiences, problems, and solutions, both in an open forum during discussion periods and informally before, during, and after presentations. In some respects, this process of rebuilding the judicial professional community, and the learning mechanisms that a professional community delivers, was more important than the actual subject matter training provided.

**Use professional peers.** Some of the most successful judicial training events the Project organized involved The Honorable Charles Case, a judge from the U.S. Bankruptcy Court in Phoenix, Arizona. Several other judges – including Charles “Chip” Erdmann, a U.S. Federal Appeals Court judge, and Luigi Carbone, a judge from the Supreme Court of Italy – proved quite popular. Project staff reported that Serbian judges participating in training events were very receptive to the advice and experience of their judicial peers. To put it simply, judges like listening to judges.

**Use NGOs where possible.** In the final months of the Project, a number of training events were organized by Serbian NGOs under subcontract to Booz Allen. Using the NGOs allowed the Project to tap into a much wider range of possible (non-judicial) participants, as each NGO had its own network within the government, the private sector, and the media. Subcontracting the organization of the seminars also allowed the Project to organize multiple events in a given month, a logistical task which would have been beyond the capacity of Project staff to implement themselves. Finally, using NGOs helped ensure that Serbian views were reflected, rather than simply presenting a “Western” or U.S. perspective that might have been discounted or resisted as irrelevant by Serbian participants.

**Use local experts where possible.** The Project's main operating premise for judicial training was to focus on training local trainers, with the aid of foreign experts only as needed. The goal was to establish a framework for a sustainable judicial training system. The quality of local practitioners and professors on many topics is quite high, and most of the organizers and presenters at the Project's training events were Serbian, with foreign experts comprising only a small minority of instructors.

**Diversify.** By working with a variety of local counterparts – the Judges Association of Serbia, the Judicial Training Center, Serbian NGOs, the Belgrade University Faculty of Law, and others – the Project was able to continue delivering training events despite difficulties in identifying a formal institutional counterpart. The delivery of these events also helped create grassroots support for training and professional development initiatives, and generated demand for continued professional development efforts among judges and other legal professionals.

**Serbian NGOs need significant training in writing proposals.** The Project staff repeatedly observed that most Serbian NGOs needed training on writing and developing proposals. Virtually all of the proposals submitted lacked one or more of the following:

- Clear statement of the goal(s) of the proposed project, including an explanation of why the project should be funded and what the outcome or impact would be.
- A list of specific tangible and verifiable results or deliverables.
- A plan for disseminating information or results through public education efforts.
- Realistic pricing of items such as meals, conference facilities, or photocopies (several NGOs proposed hosting events at the most expensive venues in Belgrade).
- Sufficient funds for providing English-language translations for key documents.
- A budget justification including provisions for indirect cost recovery.

Some of the proposals were so badly drafted as to be completely unworkable. Almost all of them required extensive redrafting.

**When performing subcontracts, most Serbian NGOs need to be watched closely.**

Many of the NGOs faced issues in contract implementation:

- Several NGOs required significant intervention and support from Project staff to ensure that the deliverables contracted for would be delivered on time and with sufficient quality. As noted above, one contract was cancelled due to the unsatisfactory performance on another contract held by that NGO. Another NGO turned in an inferior product that had to be sent back and redone, with a delay of nearly three months. The Project was greatly aided by the fact that the

subcontracts were performance-based, with payments made upon the completion of defined deliverables by a fixed deadline. The Project also found that proactive management, including contacting the NGOs prior to deliverable due dates to ascertain their progress, was critical to successful implementation.

- Most NGOs required an extension of their subcontracts. Although many of those extensions were caused by a delay in the approval process inside USAID, in many other cases extensions were required due to the NGOs themselves. Project scheduling should include sufficient time to negotiate, generate, and sign contract modifications prior to the end of that subcontract's period of performance, if an extension is likely to be required. In any event, frequent contact with the NGOs to determine progress towards deliverables is necessary.
- Many NGOs submitted reports that failed to clearly identify terms, individuals, and assumptions. For example, a common shortcoming was failure to identify whether a government agency, regulation, or law was Serbian or Yugoslavian. Other reports provided lists of names without identification of every individual's affiliation or background. Report authors often assumed that the reader had detailed knowledge of procedures (e.g., the company registration process) which should have been outlined in appendices or footnotes.

Future projects should take the shortcomings of local NGOs into account. A review period should be incorporated into all NGO subcontracts, to allow critical feedback to be presented and incorporated into the final version of a report. Project staff should maintain continuous contact with NGOs throughout the subcontract period of performance. NGOs should be also required to submit electronic versions of their reports.

**Local counterparts have limited resources to deliver promised outcomes.** The Serbian Ministry of International Economic Relations made numerous statements about the commercial laws that it was planning to review, redraft, or write from scratch. In March 2001, the Ministry produced a long list of such laws, along with a tentative schedule of reforms.

As it turned out, only a single new commercial law was passed during the 14 months of the Task Order period of performance, and only three rather minor laws were amended. With time, it became evident that commercial law reform was not a very high priority for the Serbian government. Understandably enough, the MIER did not emphasize this aspect of government policy, so that the Project – and other donors – wasted a certain amount of time and effort attempting to give technical assistance where it was not needed or, in fact, desired. This situation only became obvious after the Project began coordinating and sharing information with other donors, and monitoring the passage of commercial laws by means of the monthly-updated Commercial Law Matrix. Future projects should look carefully at the actions, as well as the public statements, of Serbian government ministries.