



International
Development Law
Institute

**TRAINING FOR ACCEPTANCE:
WORKSHOPS TO PROMOTE
THE ADOPTION AND USE OF UNIFORM LAW TEXTS
IN DEVELOPING COUNTRIES**

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A Presentation for the International Congress on "Uniform Law in
Practice" sponsored by the International Institute for the
Unification of Private Law (UNIDROIT)

Rome, 7-10 September, 1987

In an interdependent world, distances shrink as technology improves modes of travel and communication. Just as the common resources of sea and space have inspired conventions on maritime and air transport, cross-border business dealings require a jus commune. In our time, "the international unification of law is a real necessity"¹.

Developing countries have a special stake in unification, especially in the arena of international trade law. On the one hand, unification places industrial and developing countries on a par.

"The progress of the unification of law is in the interest of underdeveloped countries, as it abolishes the difference between rich and poor country"².

Moreover, with respect to international trade, the developing countries have a vested interest in the formulation of uniform rules. As Professor Date-Bah notes: "The typical developing country depends³ on international trade more than the typical developed country."

I. 'Twixt Cup and Lip

Despite (or perhaps because of) its importance, unification is a long and tortuous process. Almost a century of effort has produced only modest results, if measured only in terms of drafting output. Unfortunately, the record of adoption and use is even worse.

Developing countries especially face serious constraints. Third World representation in the conference organizations has been proportionately less than among Northern states. Largely for cost reasons developing countries have relied more heavily than industrial countries on diplomatic rather than professional, technical representation in the preparatory work. A Conference on the Adoption of the UNIDROIT Draft Convention on Agency in the International Sale of Goods held in Geneva January 31-February 17, 1983 illustrates the point: among industrial countries represented, four times as many included professional (as opposed to purely diplomatic) representation than the developing countries represented there.

Finally, there is the problem of educating key constituencies in the developing countries, where there are fewer established means of disseminating information or generating proposals regarding draft conventions.

One must, at the outset, acknowledge the inherent difficulties of uniform law-making. The preparatory, drafting and conference stages impose arduous demands on all concerned. The standard is high. As Professor David points out: "A uniform law must be prepared with special care - it must be a better made law than others"⁴. At the same time, the environment for draftsmen is far from ideal. The participants represent different nationalities, legal systems, languages and cultures. Each word, phrase, sentence and article must pass through a bramble bush of disparate legal concerns.

At the stages of adoption and utilization, the problems are more mundane. Inertia, legal xenophobia, misunderstandings and bureaucratic resistance to obligations are the enemies of uniform law in practice.

Ironically, it is the lawyers and businessmen, those who potentially have the most to gain from an international trade law, who typically oppose the uniform laws. As Professor David has observed:

"Lawyers and businessmen are attached to the status quo, to the order of things which they know, and to which their behaviour and their ways of doing things have been adapted. They view all reforms with suspicion, seeing primarily the trouble it will cause, rather than the beneficial effects and the progress which it is intended to produce. When the reform has been carried out, they will be reconciled and recognize that they may have improved matters. Until then, many circles will be against it on principle, even if no acquired right or vested interest is threatened or questioned."⁵

What accounts for the lassitude of developing countries in adopting and using uniform law? As suggested above, it would appear that there is not a single explanation. Rather the problem is cumulative: inadequate representation by Third World states in the drafting process, over-reliance on diplomatic (rather than technical) representation at conferences, the lack of articulate constituencies at the national level and an almost total absence of dialogue within user countries before and after adoption of a uniform law. If this assessment is valid, there is in the developing nations no panacea for bringing uniform law into practice.

Rather the problem must be approached at each stage, with an effort to secure the maximum participation of developing country experts in law-making, taking into account the severe financial constraints which face most developing country governments.

Only direct, active participation from the outset in the law-or rule-drafting can provide a developing country with an adequate stake in the unification process. But since the ideal is not always attainable, it may be useful to consider alternative approaches. Beyond increased participation by developing countries at the law-making stages, one approach which may be both productive and cost-efficient is **training** - not traditional courses or seminars, but strategically organized workshops, which would encourage through presentations, discussions and practical exercises serious dialogue among the affected parties.

2. A Workshop Approach

The International Development Law Institute has added workshops to its regular agenda of Rome-based courses and seminars for developing country legal advisors and negotiators⁶. The essence of IDLI's workshop method is adaptability to meet clearly-defined objectives. For example, in 1986 the State Economic Commission of the People's Republic of China invited the Institute to design and conduct a training workshop for its draftsmen of a new company law and legal advisors to Chinese public enterprises. In close collaboration with the Commission, IDLI developed a comparative law syllabus and recruited as visiting instructors two experts: one, an internationally recognized professor of comparative business organizations and the other, a principal draftsman of the Egyptian company law of 1981 and public enterprise law of 1983. Using simple, small group exercises, the workshop fulfilled its dual objectives of providing alternative drafting models for the draftsmen and introducing Chinese legal advisors to the major issues of corporate law arising under different legal systems.

The IDLI workshop model could, we believe, be adapted to serve the unification process, especially in countries which are financially constrained from participating directly in uniform law- or rule-making.

The overall objective would be to engage key representatives of government agencies and private organizations interested in a particular uniform draft law or set of rules. To do this, one may envision a series of workshops which would not only disseminate information about the draft rules or law, but also obtain feedback from country users. The same approach could also be used with respect to signed conventions in order to secure adoption and utilization (or utilization after adoption) in a particular state. Workshop effectiveness, however, would be enhanced if participants are made to feel that their contributions and suggestions will be taken into account by the draftsmen.

At the national level, objective-setting is normally carried out in collaboration with a host country counterpart organization. For the purpose of illustrating the model, let us assume that the National Bar Association in "Ruritania" is interested in hosting a workshop on the UNCITRAL draft uniform rules on bank guarantees. In consultation with the Association, IDLI would state objectives, perhaps along the following lines:

1. To identify the ten most important provisions of the draft rules affecting Ruritanian projects which normally require bank guarantees;
2. To compare and contrast those provisions with applicable national law; and
3. To define any residual problems and to propose any textual changes.

With agreed objectives clearly established at the outset, design and implementation of a training workshop could proceed.

IDLI workshops typically involve six planning elements as follows:

1. Counterpart Organization;
2. Diagnosis;
3. Target audience;
4. Visiting instructors;
5. Syllabus; and
6. Financing.

Each of these may be considered in turn.

Counterpart Organization. In designing and conducting workshops in developing countries, IDLI cannot operate effectively in isolation. For both preparation and implementation, close collaboration with a host country counterpart organization is essential. More often than not, the counterpart is the requesting entity - a government ministry, bar association or resident office of a cooperation agency. There are three important criteria for an IDLI counterpart: knowledge of the subject matter and personnel who deal with it in the host country; recognized competence and authority in the legal and official communities and enthusiasm for the workshop. For the purpose of our hypothetical we may assume that the National Bar Association of Ruritania, fulfilling all three stated criteria, has stepped forward to serve as IDLI's counterpart.

Diagnosis. In IDLI methodology, diagnosis (or needs assessment) focuses on the identification of legal issues and the setting of priorities, based on preliminary contact with interested parties. For example, preparatory meetings between the representatives of IDLI and its host country counterpart would essentially resolve the three major planning issues (target audience, visiting instructors and syllabus) while at the same time settling logistical issues (workshop dates, training site, protocol). Normally the diagnostic survey would precede the actual workshop by at least six months, thus providing ample time to implement the course of action agreed upon.

Target audience. For a workshop designed to facilitate adoption and/or utilization of a uniform law or uniform rules, the question of target audience is paramount. On the one hand, the participant group must be small (not more than 25) in order to maximize both understanding and participation. On the other hand, it must adequately represent the key national groups affected by the uniform law or rules. In our hypothetical case, we might agree upon a target audience composed of government lawyers representing the Law Ministry and the departments or ministries concerned with bank guarantees, leading members of the local bar and law faculties and representatives of the business community (including chamber of commerce leaders and construction industry representatives).

A good mix of interest groups is as important as the professional qualifications of those selected to represent the various groups. Clearly, the uniform law topic is too important to be left to the lawyers: interdisciplinary participation is essential.

Visiting Instructors. We believe that the modest objectives set for a workshop series on a particular uniform law or set of uniform rules could be accomplished within two full (i.e. six hour) working days in each country. For such a program we envision a faculty composed of one foreign expert, one local expert and an IDLI Program Legal Counsel. The foreign expert should ideally be a staff representative of the conference organization (in this case UNCITRAL). The local expert might be the professional representative on the Ruritanian delegation to the conference, if indeed Ruritania is so represented. More likely, the local expert would simply be a respected lawyer who practices locally in the subject matter under review. In selecting the local expert, the counterpart would play an invaluable role by drawing up a short list of candidates to meet with the IDLI representative during the diagnostic visit. The IDLI Program Legal Counsel, with both legal and training experience, would have overall responsibility for the design and conduct of the workshop. In particular, the PLC would ensure a two-way dialogue through discussion and practical training exercises.

Syllabus. The syllabus would be developed in close collaboration with the foreign expert on the one hand and the host country counterpart on the other. Returning to our model, a draft program for a two-day workshop on the uniform rules for bank guarantees might be as follows:

Day 1

Morning

Opening ceremony
Workshop objectives
Workshop methodology

Uniform rules: current state of play and
identification of major issues

Afternoon

Comparison of uniform rules with current national
law

Practical exercise.

Day 2

Morning

Comparison of uniform rules with current national law

Practical exercise (2)

Afternoon

Plenary session to identify major advantages/disadvantages of uniform rules

Recommendations for draftsmen

Closing session

Financing. Inevitably, one must face the problem of financing an in-country workshop. The sooner this issue is addressed and resolved the better. For countries which find it difficult to finance expert participation in the uniform law drafting process, it may be comforting to know that the costs of holding a two-day workshop are considerably less than sending one or more experts to a series of conference sessions. For example, if workshops are organized on a regional basis in sequences of four in the same language over a two-week span, the foreign exchange costs could be confined to the US\$ 15,000 range for each workshop. This sum would cover all "imported" elements of preparation and implementation of the workshop, including the diagnostic survey mission, but would not include local costs for participants, training site, local materials, hospitality/ entertainment and the like.

This cost estimate assumes that the services of the foreign expert would be "donated" by the conference organization, with only travel and per diem to be financed under the training project.

Fundraising for such projects is both art and science. Because of the importance of international trade law on economic development, especially with the current attention being given to business efficiency and privatization, both multilateral and bilateral cooperation agencies may be interested in funding training workshops on a project basis. One prudent approach may be to propose a "pilot" project of four workshops, with the interested host governments to be responsible for local costs. If the initial workshops are judged successful, based on an evaluation process incorporated into the project design, the donor community might then be approached to provide substantial additional amounts for repeating the modules in other regions, perhaps at the rate of two or three per year over a three or four year period.

For example, three training modules a year over three years would involve some 36 countries in the unification process by way of the training workshop dialogue. At that scale, the overall costs could probably be reduced to US\$ 50,000 per module or US\$ 12,500 per workshop.

Donors are placing increased emphasis on human resource training as they realize the value of technology and information transfer. Thus they may be receptive to a training project requested along the lines proposed above.

3. Summary

As suggested, unification of law can promote economic development, but a major barrier⁷ is the "conservative and nationalist attitude adopted by lawyers". This obstacle can only be overcome, as Professor David says, by education.

"Lawyers must be convinced that the present position is bad, and compromises the prestige and authority of the law. They must also be led, by means of comparative law, to realize that the value of their own attitudes is only relative ."⁸

The potential advantages of an in-country training approach are twofold:

- it would facilitate developing country participation in the drafting process by taking that process to the field;
- with both greater understanding of the proposed law or rules and a sense of participation in the process, developing countries would likely accelerate their adoption and utilization of such laws and rules.

Further, if such workshops could be financed and conducted on a project scale, the per-country costs would be modest. Whether the results (in terms of adoption and utilization of uniform law) achieved through training warrant those costs remains to be established. However, it would appear that the importance of creating uniform law in practice is great enough to justify a pilot program.