

*Conference on International Coordination
of Secured Transactions Law Reforms*

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What I Have Learned About International Secured Transactions Law Reform (mostly the hard way)

- Different challenges in creating consensus as to big-picture points and in drafting detail-level exposition in semi-diplomatic setting
- Impediments to success of top-down reform.
- Well-drafted instruments are not enough

Three Recent Stages of International Secured Transactions Reform

- Early stage (1990s), exemplified by United Nations Convention on the Assignment of Receivables in International Trade
 - Heated debate, limited consensus, some substantive rules but greatest value added by clear choice of law rules
- Middle stage (2000s), exemplified by UNCITRAL Legislative Guide on Secured Transactions
 - Broader scope, more comprehensive, more agreement on broad outlines
 - Still forceful disagreement on some issues
 - Recommendations include significant detail
- Late stage (2010s), exemplified by UNCITRAL Model Law
 - High degree of consensus on broad outlines
 - Detail-level debates primarily among States with existing expertise and minimal need for reform

Lesson One – Creation of an International Instrument

- Creation of broad-focused instruments requires both consensus as to big-picture points and agreement as to exposition of detail-level rules.
 - These tasks involve entirely different dynamics and skills; the same actors not necessarily equally proficient in both.
 - Advisability of distinguishing between details that are essential for a statute or other instrument to work as intended and those that satisfy the need for an answer, but do not require a particular answer
- Soft law is easier to create than hard law.
 - Desirability of reform \neq desire for disruptive reform.

Lesson Two – Some Limitations on Top-Down Reform

- Sources of desire for reform play a large role in its success.
 - In a State with active secured credit markets, and lenders who are seeking to engage in economically useful transactions not supported by current law, reforms will have significant traction.
 - In a State seeking to improve ranking or otherwise improve credit climate by use of a “magic bullet,” law reform alone is probably insufficient to achieve its goals:
 - The vitamin approach (“take this, it’s good for you”) rarely succeeds.
 - Incentive of actors who benefit from the status quo to resist reform is likely greater than the incentive of those who might benefit from reform to support it.

Lesson Three – Good Law is not Enough

- High quality instruments are necessary for good secured transactions reform but are not sufficient:
 - A good statute is like a good set of carpenters' tools. They work best when used by trained professionals, less useful for those without capacity to use them.
 - Capacity-building takes time. Frustration over failure of new law to generate results quickly does not.
 - Overly cautious regulators can present a significant impediment to achieving goals of secured transactions reform.

More Attention Needed ...

- Coordination among international actors is essential
 - UNCITRAL, Unidroit, Hague Conference have made significant progress in this area, but multiplicity of instruments can be confusing to States
- Coordination and quality control of drafting consultants is important
 - Idiosyncratic drafting choices can impact both harmonization and internal coherence
 - Adjustment of models to local needs is critical, but drafting implementation can easily lead to unintended side effects

Conclusion

- Success in secured transactions law reform requires more than creating a good instrument
- Law reform is not a journey for the faint-hearted
- The benefits of reform are substantial and well worth the effort