Reflections on the conference

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Areas for discussion

(a) Content of reforms
(b) Operation of agencies/institutions
(c) Coordination (maybe subset of (b))
(d) Implementation
Why reform?

- Economic benefits of reform
  - How do we measure or test for these?
- Inefficiencies in existing law
  - Path dependent complexity and/or fragmentation
  - Specific problems in current law eg
    - Excessive formalities
    - Limited or no non-possessory security
    - Limited or no security over future assets
  - Lack of infrastructure eg register
  - Lack of effective enforcement
- Modernisation including IT and other technology
- Cross-border issues
- Harmonisation
Harmonisation

- Why harmonise?
  - Self evident?
  - Barriers to cross-border trade and finance
  - Take advantage of experience of others
  - What does harmonisation mean? How similar do laws need to be?
- Role of principles
  - Agreed set of attributes of secured transactions law
    - If ideal so self-evident why do we have so many sets of principles?
  - Ideal or compulsory?
  - Used as a benchmark to assess reformed law
  - To what extent can principles be adapted to local conditions?
Role of models

- Hard law v. soft law
  - Hard law necessary in some international contexts eg Cape Town
  - Hard law needs alternatives (CTC) or matters left to national law to accommodate disagreements
  - Soft law better for national reform? Cf OHADA

- International models eg UNCITRAL Model Law, Inter-American Model Law,

- National models eg Art 9, PPSAs, neighbouring countries
Role of Models

- Good things about models
  - Fleshes out principles; Much easier to see how a law will look when fully drafted
  - Cheaper and easier than starting from scratch
  - Get distilled views of many experts
  - Can use as ‘tool box’
  - Can give choice of models

BUT

- Standardisation impossible: can’t cut and paste
- Have to ‘translate’ into local concepts
- Model may be too complicated
- Have to adapt to local conditions
- Must integrate with other parts of national law
  - Insolvency law
  - Property law
  - Procedural law
Wholesale versus piecemeal reform

- **Piecemeal reform**
  - Only relates to certain assets, or certain types of interest or certain parties
  - One set of reforms then have to reform again later
  - Amending existing law rather than introducing whole new system
  - Why?
    - Opposition (have to work out which battles are important and which are not)
    - Time
    - Transitional costs

- **Wholesale reform**
  - New system which is consistent and works well
  - Development of registry is an essential part of STR. Usually need wholesale reform to make registry work
  - Enables experience from other countries or international organisations to be used (see harmonisation)
  - Overcomes path dependent fragmentation and complexity
  - Failed piecemeal reforms may erode confidence; may never get another chance
  - BUT
    - Takes a long time
    - Transitional costs
  - Is the best the enemy of the good?