



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?*