Coordinated technical assistance: inter-organizational collaboration for better results in secured transactions law reform

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Abstract

In the field of secured transactions law reform, the development of international standards is largely complete. As the focus shifts towards domestic implementation, a new set of challenges arises. This article considers inter-organizational collaboration as it has evolved during the codification activities in Phase I and how it might be adapted to address several challenges frequently encountered during the course of domestic implementation in Phases II and III along the continuum of international harmonization. With examples drawn from the Organization of American States' Secured Transactions Project (2012–15), which had capacity building as its primary goal, the article examines the range of activities inherent in any major domestic law reform project undertaken with technical assistance, from the initial steps of raising awareness through to training the judiciary. To ensure domestic implementation of laws that are consistent with international standards and yield the desired outcomes of an operational secured transactions regime as demonstrated by fulsome user uptake, coordinated efforts will be required from all those involved in the process. In that respect, creating improved mechanisms for the exchange of information about the status of reforms, such as a 'single window clearing house', would be invaluable. The article concludes with reflections on the unique role of the Organization of American States, in ongoing cooperation with other entities, towards realizing the ultimate goal of secured transactions law reform and improved access to credit in the Americas.

Too many cooks (unless coordinated) spoil the broth.

I. Introduction

The reform of secured transactions law has been a subject of growing interest over the past decade. Thus, a recent initiative to consider how technical assistance

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could be better coordinated for the furtherance of such reforms was most welcome. The Secured Transactions Coordination Conference that was held in Philadelphia, USA, on 9–10 February 2017 (Penn Conference) brought together participants from international organizations, academic institutions, and other entities for the first of such discussions.[1] Shortly afterwards, the United Nations Commission on International Trade Law (UNCITRAL) held its fourth Colloquium on Secured Transactions in Vienna, Austria, on 13–15 March 2017 to consider possible future work topics.[2] The event included a panel discussion on coordination and cooperation between organizations providing technical assistance on secured transactions law reform. This article, which originated with a few ideas about challenges faced during domestic implementation of international instruments,[3] incorporates reflections on discussions during those two conferences as to how improved inter-organizational collaboration might help address some of these challenges, notwithstanding that such collaboration perhaps also poses challenges of its own.

A useful starting point might be to consider the continuum of activities that encompass international harmonization and codification in private international law, specifically in the context of secured transactions law reform. As was neatly outlined in Philadelphia, the process occurs in roughly three phases, as follows: (i) a legislative phase at the multilateral level that comprises the development of international standards, such as conventions, model laws, and other soft law instruments; (ii) an implementation phase at the nation State level that comprises development and implementation of national laws and collateral registries; and (iii) a usage phase at the business level that comprises development and the launch of new credit products.[4] Phase II can be deconstructed further into three more 'phases' (to avoid confusion, renamed in this article as 'stages') that comprise: (i) legal and regulatory reform; (ii) creation of the collateral registry; and (iii) capacity building.[5]

[1] Attendees included representatives from the International Monetary Fund (IMF), the World Bank Group/International Finance Corporation, the United Nations Commission on International Trade Law (UNCITRAL), the International Institute for the Unification of Private Law (UNIDROIT), the Organization for the Harmonization of Business Law in Africa (OHADA), various regional development banks (eg, European Bank for Reconstruction and Development (EBRD), Asian Development Bank), governmental agencies (eg, United States Agency for International Development, and Department of State), the National Law Center for Inter-American Free Trade (NATLAW), the International Insolvency Institute (INSOL), academics and practitioners. As the conference was held under the Chatham House Rule, none of the remarks made during the conference that are referenced in this article will be attributed, unless the content has been otherwise made public and posted to the conference website.

[2] Hereinafter UNCITRAL Colloquium.

[3] Jeannette Tramhel, 'The Next New Challenge for Private International Law? The Intergovernmental Perspective' (2016) Proceedings of the American Society of International Law (ASIL) Annual Meeting, 110, 311–15, <https://doi.org/10.1017/S0272503700103301>.

[4] John M Wilson, 'Improving Coordination and Implementation' (February 2017) Power Point Slide Presentation, <https://www.iiiglobal.org/sites/default/files/media/John%20Wilson_Penn.pdf> (accessed 31 May 2017).

[5] Ibid.

II. Challenges along the continuum

1. Development of international standards

In the field of secured transactions, Phase I is essentially complete; States and international agencies have largely shifted their efforts to Phases II, in particular, and III. Nevertheless, given the importance of the international texts, it is useful to begin with a brief review of Phase I. It is the development of international standards for secured transactions law that has received primary attention over the past decade, which falls squarely within the mandate of the three international organizations primarily dedicated to private international law (PIL),[6] namely UNCITRAL,[7] the Hague Conference on Private International Law,[8] and the International Institute for the Unification of Private Law (UNIDROIT).[9] Even with the inclusion of a few regional organizations and other entities also engaged in the harmonization and codification of PIL, the group is a small one. Consequently, it has been over the course of several decades of this work that the framework for inter-organizational collaboration in this field has been established, which could—and should—serve as a useful foundation for future cooperation during the activities of Phases II and III. This is especially so given that the ensuing work of technical assistance in these subsequent phases invariably involves the texts. Hence, consideration of the basis for this collaboration is appropriate.

The Organization of American States (OAS) is an intergovernmental organization that is considered a 'regional agency' within the United Nations (UN).[10] Cooperation and collaboration take place both at the political and institutional levels. The OAS Charter specifically provides that the General Assembly has

[6] One use of the term 'private international law' is to refer only to the traditional scope of the field comprising conflict of laws rules as distinct from 'international private law.' At the OAS and in this article, 'PIL' is used more broadly to encompass both aspects. See <http://www.oas.org/en/sla/dil/private_international_law.asp>.

[7] UNCITRAL was established with its object being 'the promotion of the progressive harmonization and unification of the law of international trade' and to do so by '(a) coordinating the work of organizations active in this field and encouraging cooperation among them; (b) promoting wider participation in existing international conventions and wider acceptance of existing model and uniform laws; (c) preparing or promoting the adoption of new international conventions, model laws and uniform laws and promoting the codification and wider acceptance of international trade terms, provisions, customs and practices, in collaboration, where appropriate, with the organizations operating in this field; [*inter alia*]' Establishment of [UNCITRAL] UN GA 2205(XXI), 17 December 1966, <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/005/08/IMG/NR000508.pdf?OpenElement>.

[8] As provided in its Statute, Article 1, 'The purpose of the Hague Conference is to work for the progressive unification of the rules of private international law.' <https://www.hcch.net/en/instruments/conventions/full-text>.

[9] As provided in its Statute, Article 1, 'The purposes of the International Institute for the Unification of Private Law are to examine ways of harmonising and coordinating the private law of States and of groups of States'. As to collaboration, Article 12 provides as follows: '[t]he Governing Council may enter into relations with other intergovernmental organisations, as well as with non-participating Governments, in order to ensure cooperation in conformity with their respective aims.' <http://www.unidroit.org/about-unidroit/institutional-documents/statute>.

[10] Charter of the OAS, Article 1, <http://www.oas.org/en/sla/dil/inter_american_treaties_A-41_charter_OAS.asp>.

among its principle powers 'to promote collaboration. . .with other international organizations'.[11] While the Inter-American Juridical Committee (CJI) serves as an advisory body to, *inter alia*, 'promote the development and codification of international law',[12] the OAS Charter also provides for specialized conferences to deal with special technical matters.[13] Accordingly, with extensive involvement from the CJI at various stages in the process, over the past 40 years the OAS has held a series of Inter-American Specialized Conferences on Private International Law (known by the acronym in Spanish as CIDIP). These seven CIDIPs, held intermittently since 1979, have resulted in a total of 26 instruments.[14] These include the Model Inter-American Law on Secured Transactions adopted in 2002 at CIDIP-VI and the accompanying Model Registry Regulations adopted in 2009 at CIDIP-VII.[15] At these diplomatic conferences, in addition to the adoption of legal instruments, OAS Member States have frequently also adopted resolutions to endorse instruments that have been developed by other organizations.[16]

OAS Member States also act through resolutions adopted at the General Assembly to further encourage inter-organizational collaboration—for example, as follows:

> To also instruct the Department of International Law to promote a greater spread [that is, dissemination] of private international law among member states, in collaboration with other organizations and associations that work in this area, to include [UNCITRAL], the Hague Conference on [PIL], [UNIDROIT], and the American Association of [PIL].[17]

[11] Ibid, Article 54, paragraph d). 'to promote collaboration, especially in the economic, social and cultural fields, with other international organizations whose purposes are similar to those of the [OAS]'.

[12] Ibid, Article 99.

[13] Ibid, Article 122 provides that 'the Specialized Conferences are intergovernmental meetings to deal with special technical matters or to develop specific aspects of inter-American cooperation.'

[14] For a complete list of CIDIP instruments, see: <http://www.oas.org/en/sla/dil/private_international_law_conferences.asp>.

[15] Model Inter-American Law on Secured Transactions, CIDIP-VI/RES.5/02 (adopted at the third plenary session, held on 8 February 2002); Model Registry Regulations under the Model Inter-American Law on Secured Transactions, CIDIP-VII/RES.1/09 (adopted at the second plenary session, held on 9 October 2009). For texts, see aforementioned website.

[16] For example, 'to recommend that the Member States of the [OAS] adopt legislation consistent with the UNCITRAL instruments on Electronic Commerce and Electronic Signatures adopted in 1996 and 2001.' Rules for Electronic Documents and Signatures (approved at the third plenary session, held on 8 February 2002), para 1. OEA/Ser.K/XXI, CIDIP—VI/RES.6/02, 27 February 2002. Similar resolutions were adopted at CIDIP-V encouraging OAS Member States to participate in PIL instruments developed by UNIDROIT and the Hague Conference. See, Diplomatic Conference to be Convened by UNIDROIT for the International Protection of Cultural Assets. CIDIP-V/RES.3/94; Signing and Ratification of the Convention on the Protection of Children and Cooperation in the Area of International Adoption. CIDIP-V/RES. 2/94. UNCITRAL has a similar policy to recommend instruments adopted by other organizations 'when appropriate.' See A Guide to UNCITRAL, United Nations, Vienna, 2013, para 66. <http://www.uncitral.org/pdf/english/texts/general/12-57491-Guide-to-UNCITRAL-e.pdf>.

[17] International Law, AG/RES.2909 (XLVII-)/17) (Adopted by the 47th OAS General Assembly, 19–21 June 2017), Section I, i, para 3.

This example from 2017 is only the most recent expression of cooperative intentions as the history of OAS inter-organizational collaboration in the field of PIL pre-dates not only this resolution[18] but also cooperation agreements that have been in place for decades.[19]

In furtherance of this mandate, the OAS Department of International Law (DIL) undertakes a variety of activities; a recent example was the orchestration of a panel discussion among representatives from the Secretariats of the main international organizations that focus on PIL and to which representatives from the permanent missions of OAS Member States had also been invited.[20] This forum provided an opportunity for OAS Member States to engage directly with these organizations and to learn more about the collaborative work ongoing in the field of PIL.

Representatives from these Secretariats have also taken part in activities of the Inter-American Juridical Committee; for example, a Roundtable on Private International Law was recently held, to which PIL experts were invited to discuss the progress of PIL in the Americas and to suggest specific issues for possible consideration.[21]

Another way in which such collaboration has been fostered has been through the participation of Secretariat staff in proceedings held by another of these organizations. For example, CIDIP conferences have included representatives not only from OAS Member States but also from the main international organizations engaged in the development of PIL instruments.[22] Likewise, representatives from OAS DIL have participated in meetings of UNCITRAL, both at the annual sessions of the Commission and at the meetings of various working groups.[23]

Collaboration also takes place through consultations, exchanges of documents, and informal communications. In relation to Phase I and the development of

[18] Similar language as that quoted can be found in OAS General Assembly resolutions of previous years. See, for example, AG/RES.2886 (XLVI-)/16), Section I, i. para 3; AG/RES. 2852 (XLIV-)/14) Section II, para 12, and prior.

[19] These include the following: Establishment of Cooperative Relations with the Hague Conference on PIL (25/1968); Establishment of Cooperative Relations with UNIDROIT (25/1972); Cooperation Agreement between the UN Secretariat and the OAS General Secretariat (OEA/SER.D/V.14/95, 17 April 1995) <http://www.oas.org/en/sla/dil/bilateral_agreements_alpha.asp>.

[20] OAS/DIL Newsletter, '[DIL] Organizes Colloquium on Inter-Organizational Collaboration for the Advancement of [PIL] in the Western Hemisphere' November, 2015 <http://www.oas.org/en/sla/dil/newsletter_private_international_law_Colloquium_nov-2013.html>.

[21] OAS Inter-American Juridical Committee. Roundtable on Private International Law (Celebrated on Monday, 4 April 2016 during the 88th Regular Session), OAS/General Sec., DIL/doc.3/16, 25 July 2016. See also Minutes, reproduced in Annual Report of the [CJI] to the General Assembly 2016, OEA/Ser.Q, CJI/doc.521/16, 13 October 2016, at page 143 <http://www.oas.org/en/sla/iajc/annual_reports.asp>.

[22] For example, CIDIP-VI included participation from UNIDROIT, *inter alia*. CIDIP-VI, 4–8 February 2002. List of Participants. OEA/Ser.K/XXI.6, CIDIP-VI/doc.19/02 rev. 3, 11 February 2002. CIDIP-VII included participation from UNCITRAL and IFC, *inter alia*. List of Participants. OEA/Ser.K/XXI.7, CIDIP-VII/doc.7/09 rev, 19 October 2009.

[23] Eg, DIL attended the 24th session of WGI. UNCITRAL, Report of Working Group I (MSMEs) on the work of its twenty-fourth session (New York, 13–17 April 2015), 28 April 2015, A/CN.9/831, para 9 (b). While invitations to such meetings are frequent, participation is possible only rarely due to internal resource constraints.

texts, a recent example may be drawn from the development of the draft Principles for Electronic Warehouse Receipts for Agricultural Products.[24] In the course of preparing background documents on this topic, the DIL carried out liaisons with relevant international organizations that included requests for suggestions and comments on preliminary and final drafts.[25] As was noted in the report adopted by the CJI, the draft Principles serve as a means to raise awareness about the importance of warehouse legislation and its reform, to promote developments in the subject, and to encourage future work by either the OAS or other organizations.[26]

This example also serves as a useful response to the frequent question regarding possible duplication of efforts at international and regional levels. It illustrates that, like walking, step-wise progress towards harmonization and codification is easier with more than one leg. Work on similar topics can be undertaken contemporaneously by regional and international organizations with consistency in the resulting end products, provided there is use of this collaborative approach. Frequently, a regional organization can offer a more intimate forum to serve as the immediate family within the larger, extended international community. In a smaller forum, it is often easier to examine problems that may be common to States of a particular region; moreover, this smaller group may be able to achieve a higher common denominator on technical issues than might be possible within a larger group of States representing a much broader and more diverse range of perspectives. Within the Americas, OAS Member States are concerned with bridging differences between two legal systems—common and civil law—whereas technical consensus at the international level must correspond with a number of legal systems. By enabling one regional body to focus on its primary issues of concern, other bodies might be liberated to better concentrate their efforts on other issues; in this way, contemporaneous work in different fora can collectively advance progress at the international level, given the requisite spirit and attitude of collaborative dialogue and exchange.

In addition to a broad mandate for the advancement of PIL in general, OAS Member States have also adopted resolutions giving direction on specific topics, including secured transactions, '[t]o instruct [DIL], as part of the activities provided for in the Inter-American Program. . .to continue promoting the Model Law on Secured Transactions among member states'.[27]

This resolution on the OAS Model Law must be considered in conjunction with the aforementioned overarching mandate for inter-organizational collaboration. Moreover, as the OAS Model Law was completed in 2002 it predates other, more

[24] [CJI] Report: Electronic Warehouse Receipts for Agricultural Products. OEA/Ser.Q, CJI/doc.505/16 rev. 2, 27 September 2016 <http://www.oas.org/en/sla/iajc/docs/CJI-doc_505-16_rev2.pdf>.

[25] Ibid, 1. As noted in the report, consultations were initiated with the following: Food and Agriculture Organization of the United Nations; UNCITRAL (specifically Working Group IV); World Bank Group; UNIDROIT; and NATLAW. Outreach was also made to other individuals, including academics and industry experts.

[26] Ibid, 2.

[27] International Law, AG/RES.2909 (n 17), section I, i, para 2.

recent model legislation.[28] Consequently, this mandate is not to be interpreted as the promotion of the OAS Model Law instead of others but, rather, to promote needed reforms in the field of secured transaction where the OAS Model Law has served as an entry point. As will be discussed below in relation to Phases II and III, different model texts have been considered both as alternatives and as supplementary to each other.[29]

One of the questions that had been put to the panel during the recent UNCITRAL Colloquium concerns the requirement for another model law. In response, it is suggested that the existing models and other accompanying 'soft law' tools already provide sufficient material for the development of domestic legal infrastructure. As more States engage in the process of domestic implementation, it is possible that another model law of 'moderate' complexity might emerge; allowing the development of such a 'bottom-up' process might be preferable to devoting more resources to add another 'top-down', institutionally designed model.[30]

Thus, as was noted above, along the continuum of activities that encompass international harmonization and codification, in the field of secured transactions, the development of international standards has largely been completed. The foundations of inter-organizational collaboration that have been laid during this Phase I should serve the international community and nation States very well as the focus now shifts towards Phases II and III.

2. *Implementation*

As was already noted above, Phase II can be deconstructed into three sub-phases or stages. While helpful for the purposes of analysis, the concept is a fluid one given that the stages frequently overlap in terms of time and content; in fact, broad-based stakeholder engagement is, and should be, encouraged throughout, not only during domestic implementation but also during all three phases. Nonetheless, deconstruction is helpful in terms of identifying needs and resources, including technical assistance, that correspond to each stage of

[28] More recent instruments include the following: UNCITRAL Model Law on Secured Transactions (2016); UNCITRAL Guide on the Implementation of a Security Rights Registry (2013); UNCITRAL Legislative Guide on Secured Transactions (2007) and Supplement on Security Rights in Intellectual Property (2010); UNCITRAL, Hague Conference and UNIDROIT Texts: Comparison and Analysis of Major Features of International Instruments Relating to Secured Transactions. United Nations (2012). Model laws have also been developed by the EBRD, OHADA and others. It is also important to note within this collection the UNIDROIT Convention on International Interests in Mobile Equipment (2001) (Cape Town Convention) and its accompanying protocols for aircraft, rail and space equipment and current work in progress for a fourth protocol on Matters Specific to Agricultural, Construction and Mining Equipment <http://www.unidroit.org/work-in-progress-studies/current-studies/mac-protocol> (accessed 27 September 2017).

[29] See text accompanying (n 52) below.

[30] Throughout the discussions at both the Penn Conference and the UNCITRAL Colloquium, several comments were made that whereas the UNCITRAL Model Law was perhaps too complex for lesser-advanced economies and the OAS Model Law was a bit too 'bare bones', perhaps what was required was another model of intermediate complexity for middle economies.

implementation. During the first stage, various legislative models and their suitability are generally reviewed in conjunction with an analysis of the domestic legal landscape and the need for reforms in the given topic and other related areas. In the second stage, the focus is on construction and the activation of the institutional infrastructure, which, in the context of secured transactions reforms, includes the establishment of the new registry and the introduction of supporting software. In the third stage, the emphasis is on capacity building so as to effectively transition towards Phase III and user uptake.

Under ideal circumstances, all three stages would be considered at the outset of the domestic reform initiative to enable the establishment of an appropriate timeline, adequate budget, and the identification and participation of stakeholders throughout the process. Although the following is a list of some of the considerations and challenges that may be anticipated at any point during implementation, these aspects will be considered in this section in relation to the stage with which each is most likely to be associated and not necessarily in order of significance or timeliness:

- domestic law reform: (i) raising awareness; (ii) political will and motivations for reform; (iii) choice of approach and choice of instrument; (iv) special conceptual challenges for civil law; and (v) contemporaneous legislative reforms;
- establishing the registry: (i) administrative and technical supports; and
- capacity building: (i) developing capacity; (ii) stakeholder consultations; and (iii) training the judiciary.

When the decision to embark upon reforms has been made, or perhaps during the course of that decision, a nation State may also decide to reach out for technical assistance. To whom that outreach is made and for what type of assistance also bears some examination.

As was described above, there is already an established tradition of inter-organizational collaboration in the development of legislative texts among the small group of organizations that are primarily involved in the Phase I work. The separate functions during Phase I (development of standards) and Phase II (implementation of those standards) often have been carried out by different entities. For example, although the original mandate bestowed on UNCITRAL encompasses a wide scope,[31] its efforts have been focused largely on the development of texts, while technical assistance for domestic implementation has been conducted primarily by other entities, such as the World Bank Group. Similarly, at the regional level in the Americas, the OAS has focused on harmonization and codification through its CIDIP process, as described above, while technical assistance has been carried out largely by the Inter-American Development Bank. In the field of secured transactions reform, however, the 'Phase I' entities have become more involved with Phase II activities. There are a variety of possible

[31] See (n 7).

reasons for this migration, such as, perhaps, expressions of interest on the part of one or more Member States, special interests or skills on the part of the Secretariat, specifically designated funding, or other considerations. It might be helpful as well to consider such a shift within the context of any general or specific mandate of an organization and the consequential implications, which extend beyond ensuring adequate resources to include also implications for inter-organizational cooperation. At the OAS, the shift was due to a combination of the aforementioned factors, but became possible largely because of specific funding that had been designated for the furtherance of secured transactions reforms in the Americas.[32]

Where there already is a long-standing tradition of collaboration, as has been described above, it can serve as a useful platform for future work. However, many other organizations are also engaged in Phase II and III activities with which there may not be this established relationship. These include the development banks at the international and regional levels, ministries of some national governments responsible for development initiatives, independent institutes, and academic entities that are also involved with legal technical assistance. In turn, many of these entities will engage individual 'international experts' as consultants on various reform projects who hail from academia or the private sector, sometimes also with public sector experience. These various entities and individuals can be referred to collectively as technical assistance providers (TAPs).[33]

Thus, the first point of departure is because of the much larger group engaged in Phase II activities. Without the tradition of established collaborative relationships that already exists among the smaller group engaged in Phase I activities, the need for coordination among this larger and more diversified group is even greater. In this next section, the challenges and considerations that were listed above will be examined in relation to each of the three stages of implementation, and these may be addressed through ongoing and better inter-organizational coordination.

A. Domestic law reform

(i) Raising awareness

The initiation of domestic reforms presupposes that within the nation State there already exists acknowledgement of the need for reforms. This will have resulted from some prior 'awareness-raising' activities that contributed towards a tipping point and a decision. The challenge of raising awareness is particularly acute in those developing countries that do not participate on a regular basis in the PIL

[32] Despite adoption of the OAS Model Law and accompanying registry regulations, it had become evident that although some OAS Member States had embarked upon domestic law reforms, many others lacked capacity to do so. Thus, the goal of the OAS Secured Transactions Project was not legislative reform *per se*, but rather, 'improved capacity of member states to implement secured transactions reform.' OAS Secured Transaction Project Profile, copy on file with author. Funding became available under the OAS/Canada Cooperation Plan Phase II (2012–15). For more information about the OAS Project, see <http://www.oas.org/en/sla/dil/secured_transactions.asp>.

[33] J Faundez (ed), *Good Government and Law: Legal and Institutional Reform in Developing Countries* (Palgrave MacMillan 1997).

codification process at the global level and/or do not have an internal consultative structure (such as the US Department of State Advisory Council on Private International Law). Even among those States that may largely rely on economic indicators to decide whether or not to embark upon law reform initiatives, a broader foundation of awareness and engagement in such fora is important, as these serve at least these purposes: (i) participating States become aware of existing instruments and those under development; (ii) delegations (usually) include PIL experts who can transmit correct information through appropriate internal channels; and (iii) as stakeholders are involved from the outset, concerns are addressed, and support for an emerging instrument is developed over time.[34]

In some States, even among those with so-called 'developed' economies, the perception may be that the existing system is already working well. In other States, although it may be generally acknowledged among policy makers that there is a need to improve access to credit, the connection of secured transactions law reform to realization of that objective may not be fully or widely understood. In both instances, objective assessment and global comparison can serve to raise awareness.[35]

One avenue of collaborative support among organizations that can assist in this regard is through consistent messaging about the benefits and advantages of a modernized secured transactions regime. States that do not necessarily participate in UNCITRAL, for example, may hear the message at the OAS, or a State may hear the message at the OAS and then again at UNCITRAL. In this way, the message can be reinforced, and efforts by one organization can be leveraged by others.[36]

A significant challenge is to ensure that the message is reaching its intended audience—those with authority to consider the possibility of domestic reforms and those stakeholders with influence to reach policy makers. Part of the reason this challenge arises is because it is common for different departments of a nation State government to be engaged with different international organizations; State representatives who participate in activities of international standard-setting organizations are frequently not the same State representatives who engage with those international organizations involved with economic development and consequential requirements for reforms to financial and commercial laws. If coordination among these international organizations can be improved, it may also improve coordination among players at the State level. Creating a 'single window' or 'clearing house' for coordination of international secured transactions reforms would be a good first step in that direction.[37]

[34] Tramhel (2016) (n 3).

[35] Eg, the World Bank, Doing Business Reports has as its goal 'to provide an objective basis for understanding and improving the regulatory environment for business around the world' <http://www.doingbusiness.org/about-us> (accessed 25 September 2017).

[36] For example, at the OAS, DIL has produced a video that explains this connection between secured transactions reforms and improved access to credit. DIL has offered to make this resource available to other organizations. The link can be found here <http://www.oas.org/en/sla/dil/secured_transactions_Video_1.asp>.

[37] This might entail a website that summarizes the status of secured transactions reforms around the world; lists the various entities, donors, and consultants involved with different phases (or related reforms); facilitates reporting, communication and exchange of information. Institution of what

(ii) Political will, 'local champions', and motivations for reform

The OAS Secured Transactions Project (OAS Project) was a technical assistance project made possible with specific funds provided under the OAS/Canada Cooperation Plan Phase II (2012–15) with the primary goal being 'improved capacity of member states to implement secured transactions reform, including the promotion of equitable access to credit'.[38] Any OAS Member State that wished to participate in the project was asked to submit an expression of interest, a practice that is also carried out by other international organizations that provide technical assistance.[39] Expressions of interest were received from El Salvador, Peru, and Jamaica; subsequently, each of these designated a government-appointed local counterpart.

As has been noted also by others,[40] an expression of interest is not necessarily evidence of sufficient political will. While one cannot set out to create a 'local champion'—a spirit of collaboration among international organizations would certainly help to foster the kind of environment where one might emerge.[41]

Although a champion can be effective in initiating reforms, local leadership with commitment and vision throughout the reform process can make the difference between a lackluster and a successful outcome.[42] In the case of the OAS Project, which will be described below, in all three cases, a decision had already been made to initiate the reforms: in El Salvador, the new secured transactions law had been enacted and was to come into force within six months;[43] in Peru, a secured transactions law had been adopted in 2006 and a draft reform bill was under consideration;[44] in the case of Jamaica, a new law had been enacted and was already in force.

Closely related to the matter of a local champion is the question of the motivations behind the reform initiative. In the case of Jamaica, for example, the new Secured Interests in Personal Property Act (SIPPA) was enacted in fulfilment of certain economic reform requirements that the government had committed itself to undertake by agreement with the International Monetary Fund (IMF).

might be considered a precursor to this kind of website has been established already by the organizers of the Penn Conference at the following link <https://www.iiiglobal.org/node/2036>.

38 OAS Secured Transactions Project Profile, above, n 32.

39 Penn Conference (n 1).

40 Ibid.

41 In this context, 'local champion' might comprise an entity or person sufficiently influential as an agent for change and dedicated to the success of a reform initiative and that might be expected to take an active role in the sponsorship or development of new legislation, with connection to and ability to inform, educate and garner support from a wide range of stakeholder groups.

42 Nevertheless, it can be difficult if the local champion is subject to political winds of change and support for the reform initiative has not been deeply rooted among a broad base of stakeholders.

43 The then administration wanted to see completion of the reform initiative, including an operational registry, prior to pending elections in the event of a change in government (which, in fact, did occur).

44 The secured transactions law in 2006 had not met with success and a draft reform bill was under consideration by the Congressional Committee for the Economy, Banking and Finance. The concern was that a second failed attempt would be fatal.

Although SIPPA was in force and the registry was operational by the IMF-imposed deadline, stakeholder involvement to that point in time had been minimal.

Ultimately, no matter the motivator or the motivation, success is largely dependent upon whether the local community of stakeholders takes ownership of the reform project.[45] Such ownership requires a 'buy-in' that ideally begins with recognition of the need for reform, translates into demand and support for the process, becomes manifest through active interest and participation throughout the process, and results in eventual usage and uptake of the new regime and associated products. Coordinated efforts among international organizations can help to foster this kind of broad-based support for sustainable reforms in the long run.

(iii) Choice of approach and choice of instrument

Having taken the decision to embark upon reform, the next choice is between wholesale or piecemeal reform. Whereas wholesale reform that would include an overhaul of the registry is time consuming and costly, piecemeal reform, if it leads to 'patchwork' and ineffectiveness, may risk loss of confidence of the industry during the process.[46] Stakes are high in either case. Model legislation is helpful as it avoids the need to begin a draft from scratch, but any model will need to be adapted to the local context and integrated with other laws in related areas, such as insolvency.[47] Approaches to the integration of an international model have been classified into three categories: (i) wholesale adoption; (ii) modification; and (iii) acculturation.[48]

Given the plethora of choices and complexity of the subject matter, it is understandable that a government with limited resources of time, funds, and staff might choose to contract out the work to those with expertise in this highly specialized field. That might be done at the initiative of the government itself or with assistance from one of the international financial institutions (IFI) under one of two approaches to support domestic law reform: (i) where a loan is made to a nation State government, which works with the IFI to implement reform or (ii) where the IFI may supervise and provide technical expertise for, but not lead (or necessarily fund), the reform effort.[49] Under any approach, whenever a consultant is engaged in the reform process, there may be concerns raised over 'quality control', and specific examples have been cited where legislation was recommended that was inconsistent with international standards.[50] Improved inter-

[45] Penn Conference (n 1). Several speakers agreed that motivations have an impact and that local 'buy-in' is critical.

[46] Ibid. This was noted as especially true where new reforms are required to ameliorate consequences of past 'failed' efforts.

[47] Ibid.

[48] Ibid.

[49] Ibid.

[50] Ibid.

organizational collaboration might prove helpful in this respect, particularly if a combined initiative can serve as a type of 'clearing house' that provides a minimum level of recognition or standard.

Ultimately, it is the nation State government (referred to as 'client' by some) that will decide upon the approach, the model instrument, the institutional partner, and the consultants selected. The technical assistant provider (TAP) must also be prepared to accept that choice, even when it is evident to the TAP that the choice may be less than optimal.[51]

Inter-organizational collaboration can be most effective during this process by keeping the best interests of the 'client' in mind. In that spirit, a prudent course of action would be to present alternatives from which the client might choose. As was noted above, although the dedicated mandate from the OAS General Assembly is to promote the Inter-American Model Law, this does not intend exclusion of other international instruments. An illustrative example is the case of El Salvador, which had used this Model Law for the development of its own domestic legislation. In the course of activities under the OAS Project, which included participation by the UNCITRAL Secretariat, technical assistance was offered to help with future revisions so that the El Salvadoran law could be recognized as being consistent with international standards under both the OAS and the UNCITRAL Model Laws, which could lead to significant benefits for El Salvador.[52]

(iv) Special conceptual challenges for civil law

Special challenges in this topic are faced by States that follow the civil law tradition. To some extent, this is because the functional approach that is fundamental to secured transactions law reforms, regardless of the 'model' chosen, requires a paradigm shift in the manner in which secured loans have been previously considered under local domestic law. A significantly revised approach may also be required in other related areas of law, and specific examples include the following: absence of the concept of 'proceeds';[53] derogation from the prohibition of 'pactum commissorium' may be necessary to permit extra-judicial proceedings;[54] or even where an appraiser is appointed by lottery, the debtor may have a right to contest the appointment.[55]

Other challenges are inherent in the structure of the civil law system itself; where the code is considered as 'the bible', it is unclear whether a new secured transactions 'law' is best incorporated into the civil code, the commercial code, dispersed

[51] Ibid. See text accompanying note 33 for definition of 'technical assistance provider' or 'TAP', which includes IFIs.

[52] 'El Salvador: Seminario de Capacitación sobre la Reforma de Garantías Mobiliarias,' OEA/Ser.D/XIX.17.1 May, 2014, 41–3 and El Salvador workshop notes on file with the author.

[53] Penn Conference (n 1).

[54] Ibid.

[55] Ibid.

between both, or enacted as a stand-alone statute.[56] With such a range of challenges and where 'reform' really represents a fundamental overhaul of the existing legal framework to enable secured lending, it is not surprising that 'a state may require several attempts to get it right'.[57]

This reality illustrates the advantages that can be gained by regional efforts within an international context, particularly with the support of inter-organizational collaboration. With capacity building as the primary objective, the OAS Project included in its activities a three-day workshop in each of the three participating States: El Salvador, Peru, and Jamaica. To each workshop were invited, *inter alia*, representatives from other States in the region that were at various stages in the reform process. Several panels were organized for the exchange of lessons learned, which yielded many frank disclosures that, it is suggested, might not have been as forthcoming in a less intimate setting compared with a regional one where discussions were held entirely in the local language of the participants (that is, Spanish, in the case of El Salvador and Peru).[58]

By the same token, the legitimacy of these workshops on this particular subject matter was significantly enhanced by the participation of UNCITRAL, UNIDROIT, the World Bank Group (through the International Finance Corporation), and several internationally recognized experts in the field. As such, these workshops were unique. Whereas several international symposiums on secured transactions have been held with the participation of these same organizations and experts, to the best of our knowledge, this was the only series of workshops where participants included the following particular mix: (i) international and regional experts; (ii) representatives from other nation States; and (iii) representatives of a wide range of stakeholder groups from the particular 'client' or 'host' State. In large measure, what had made it possible to bring this range of participants together was the exercise of the OAS's 'power to convene'. This unique approach, which was endorsed by many of the workshop participants, can and should be capitalized upon through strengthened inter-organizational collaboration between the OAS and all other entities working on secured transactions reforms within the region.[59]

[56] Ibid. The suggestion of dispersal between both received resounding disapproval from the audience.

[57] Ibid. As an example, the case of Mexico was mentioned.

[58] For example, see comments made by Sigfrid Lee Leiva, Viceministro para la Micro, Pequeña y Mediana Empresa (MiPyME), Ministerio de Economía de Guatemala en 'El Salvador: Seminario de Capacitación,' above, n 52, 73–5. See also, Peru: Seminario de Capacitación sobre la Reforma de Garantías Mobiliarias. OEA/Ser.D/XIX.17, 2 November 2014.

[59] For a compilation of participant feedback, see: OAS, Department of Planning and Evaluation, Report on Progress of Project Implementation for OAS-CIDA Plan II Projects, Report of May 2015, Part IX, Annexes. On file with author. The following extracts are illustrative: 'I felt part of this great family of secured transactions and the rich exchange of experiences during the panels and round tables not only exceeded my expectations but have also been of great benefit to the institution that I represent'; 'I found it extremely important to be able to participate in the seminar as I could learn from the experiences of other countries about their reform and the weaknesses found in their systems, which will help us avoid making these same mistakes in the development of our own system of secured transactions' (English translation of Spanish original).

(v) Contemporaneous legislative reforms

As has already been noted, reform of one law frequently requires derogations from and reforms of complementary legislation, subordinate regulations, and consequential amendments. The reform of secured transactions laws will usually require reforms of the laws governing insolvency and will frequently require amendments to prudential regulation within the purview of the central bank or banking supervisory authority. If these entities are not involved during the process to reform the secured transactions law, it may be more difficult to gain their support after the fact.

This was the situation that was encountered in both El Salvador and Jamaica during the course of the OAS Project. Although in both cases the new law had been enacted prior to the OAS Project, the need for supplementary amendments only came to light during the course of consultations with an expanded cast of stakeholders, which included the central banking authorities.

Improved inter-organizational collaboration would help to avoid such situations in the future. A centralized, 'single-window' clearing house as described above[60] would enable the user to determine for any given State whether technical assistance is being provided, in which area(s) of law, and by which TAP.[61] This will facilitate communication between all those involved in one or more stages of the implementation process.

B. Establishing the registry

One of the greatest challenges in secured transactions reform is the need for several contemporaneous activities; new legislation has to be ready to enter into force at the same time that the new registry is ready to become operational. Various transitional matters also need to be addressed, such as integration of existing registries and secured interests into the new system, and the transition frequently includes a shift from paper-based to an electronic registry. This often requires a decision of whether to adopt a wholesale approach or piecemeal reforms. Either way, as was explained above, the stakes are high; if the process is too time-consuming or results are not effective, the loss of stakeholder confidence may be difficult to regain.

(i) Administrative and technical supports

Such challenges were faced in El Salvador where the new law—enacted on 14 October 2013 and in force six months later—provided that the registry was to become operational within another six months thereafter.[62] This deadline required an intensive push by the local government, not only to develop

[60] See (n 37).

[61] In the case of Jamaica, the government had retained one consultant to draft the SIPPA, another consultant to draft the insolvency law. Contact information for the former was provided to the OAS Project Team only very late in the process and for the latter, not at all.

[62] Ley de Garantías Mobiliarias. Diario Oficial (El Salvador). Tomo no 401, no 190, 14 October 2013.

regulations that would govern the new registry but also to bring that registry into operation, which required all of the necessary physical infrastructure, new software, and staff training. In Jamaica, the situation was similar. As was explained above, although the law had been enacted and the registry was operational by the requisite deadline, in the haste, stakeholder involvement had been minimal and this had its own consequences (discussed below). In Peru, it became evident that very little engagement with the existing registry had occurred during the reform process.

As these examples illustrate, significant challenges are involved with wholesale reform, which requires a paradigm shift in legal thinking to build a completely new secured transactions regime; by comparison, legislative amendment is more akin to 'remodeling'. Improved inter-organizational collaboration could be of assistance by ensuring communications between different TAPs that may be engaged with the national government and its various sections during different phases of the reform process. For example, it would not be uncommon for a government to work with one TAP on the legislation and a different TAP on the development of the registry software. Even in cases where there is a single contract for wholesale reform across these stages, there is always the possibility of different TAPs at different stages. In either case, improved communication between all parties and TAPs early and throughout the process will help build a better secured transactions regime.

C. Capacity building

Although Phase II has been deconstructed into three stages for ease of analysis, this is not to suggest a distinct and finite time period for each activity. On the contrary, capacity building and stakeholder engagement should be included at the outset and continue throughout the reform process.

(i) Developing capacity

As was noted above, the objective of the OAS Project was not secured transactions reforms *per se* but, rather, to build capacity for such reforms, an approach in accordance with the principles of sustainable development. However, capacity building, in turn, requires capacity—that is, available resources, specifically in the form of valuable staff time.

This lack of capacity created challenges during the course of the OAS Project in several ways. In El Salvador, it was envisioned that at least one lawyer from the local counterpart, the Ministry of Economy, would be designated to join the OAS Project Team and participate in the field diagnosis and legislative desk analysis and thereby develop skills and technical knowledge over the course of the project. But the Ministry of Economy simply did not have any lawyers to spare. The situation was similar in Jamaica where the local counterpart, the Ministry of Industry, Investment, and Commerce was responsible for the oversight of a number of the reforms being undertaken in financial and commercial law. To

meet IMF deadlines, as was explained above, the Ministry had turned to international legal consultants for technical assistance; SIPPA had already been enacted prior to the OAS initiative.[63] In Peru, developments regarding the proposed bill in the congressional committee had prompted recognition within the National Council for Competition in the Ministry of Economy and Finance that the committee would benefit from the input of international experts on the subject. The Council reached out to the OAS Project Team, and a meeting was organized where these congressional members had the opportunity for a frank and fulsome exchange with a group of international experts. A meeting was also arranged for a similar exchange between the registry and this expert group, which had been assembled for the capacity-building workshop as part of the OAS Project activities in Peru.[64] The bill that was later passed by this committee reflected significant changes that brought the bill into greater conformity with the OAS Model Law and with international standards in general.[65] Even if developing this legislation took 'a couple of attempts to get it right', the growth in understanding and knowledge that occurred among those involved in the process was invaluable in order to gain the necessary local ownership and stakeholder buy-in.

As illustrated by the Peruvian example, 'capacity building' is a term that can encapsulate a wide range of activities. As with the other workshops, in the one held in Peru, the OAS Project Team brought together the same unique mix of participants described above. As the exchange of lessons learned occurred among officials from different States at various stages in the reform process, at the same time, the workshops served as a vehicle to develop and strengthen regional support networks. For example, officials from the El Salvadoran registry who participated in the workshops held both in El Salvador and Peru had a very different perspective to share and only a few months later had become strong advocates.[66]

Not only can capacity building be difficult to define, but it can also be difficult to evaluate.[67] For example, consider the challenge of demonstrating: (i) whether

[63] Apparently Jamaica's Office of the Parliamentary Counsel had also been involved with the international consultant that had been engaged to draft SIPPA.

[64] OAS/DIL Newsletter, 'Regional Capacity-Building Seminar on Secured Transactions Reform Held in Peru,' December 2014 <http://www.oas.org/en/sla/dil/newsletter_secured_transactions_seminar_Peru_Dec-2014.html>.

[65] Texto Sustitutorio, Ley de Garantía Mobiliaria, Dictamen de la Comisión de Economía, Banca, Finanza e Inteligencia Financiera en el Proyecto de ley 36/11/2013-PE (compare versions dated 14 July 2015 and 17 June 2014).

[66] For example, see comments by Francisco Rafael Guerrero, Director, Registro de Comercio, El Salvador, in Peru: Seminario de Capacitación, (n 58) 113–14. See also, Francisco Rafael Guerrero, El registro de garantías mobiliarias, Revista de la Facultad de Derecho, Universidad Tecnológica de El Salvador, Ano 7, Numero 11, Febrero 2015, 62–7.

[67] For example, as described in the OAS Project Profile, the goal was 'improved capacity of member states to implement secured transactions reform' but once this laudable objective was (perhaps erroneously) transcribed into the rigidity of the Performance Measurement Framework (PMF) as an (ill-defined) 'Immediate Outcome', this led to equally problematic 'Indicators', 'Baselines', and 'Targets.' OAS Project Profile, on file with author.

or not positive change has been achieved and (ii) whether such change has been a direct 'outcome' of, and directly attributable to, any particular 'output' of the activities of any one project or the actions of any one organization.[68] Acknowledging this reality, organizations should be prepared to build upon advances that have been made by others; to do so effectively requires a spirit of collaboration, evidenced by a willingness to share the fruits of one's labours—results, contacts, information—while also recognizing the unique contributions that can be made by all.

(ii) Stakeholder consultations

Although stakeholder consultation was not the first topic herein, as was emphasized already, any project of secured transactions law reform would be well served if it were to begin with stakeholder consultation as a priority and to include a plan for consultation that would be integrated throughout the process.[69] In fact, stakeholder consultation can start as early as Phase I; as was described above, State participation in the international codification process can serve a dual role and also generate internal stakeholder dialogue to inform, educate, and garner support.

The topic is being considered at this point in the discussion because the line between stakeholder consultation and capacity building can be somewhat blurred, as will be illustrated with experiences from the OAS Project. Under ideal circumstances, when developing a methodology for the reform process, the State government will determine which stakeholders should be included during consultations, whether or not to design a steering committee, a legal committee, and an implementation committee, and so forth. These elements would form part of the terms of reference, if applicable, in a reform engagement between a TAP and a State government. In the course of such work, the identification of stakeholders to be consulted is itself an exercise in capacity building.

Of course, not every reform project can be carried out under ideal circumstances. As was explained above, all three States that expressed interest in the OAS Project (a project with capacity building as its goal) had already initiated reforms and were well along in the process.[70] As became evident, however, both stakeholder consultation and capacity building had been minimal.

For example, although the new law in El Salvador had already been enacted, the initial field visit by the OAS Project Team to El Salvador included a stakeholder

[68] In the field of monitoring and evaluation, these are all terms with specific meanings under the Results Based Management logical framework approach, discussion of which is beyond the scope of this paper.

[69] As was emphasized already, any project of secured transactions law reform would be well served if it were to begin with stakeholder consultation as a priority and to include a plan for consultation that would be integrated throughout the process. However, as these ten challenges are not being considered necessarily in the progressive sequence within a law reform process, this topic is being considered immediately after capacity building. The order is not intended to suggest anything about the level of importance of any one particular topic.

[70] See text accompanying notes 43 to 44.

mapping exercise with the local counterpart during which it became evident that the Central Bank and the supervisor of banking institutions had yet to be consulted. As a result, the need for supplementary amendments came to light as was described above.[71] Similar events transpired in Jamaica.

During discussions held with the local counterpart in all three States, it was suggested that, in addition to stakeholders from the financial and legal sectors, the list might also include the national mechanism dedicated to women's issues, civil society organizations dedicated to financial inclusion of women and the promotion of women-owned businesses, and entities that promote lending to micro, small, and medium enterprises and other marginalized groups. Although an optimist might respond 'better late than never', it would have been preferable to include these groups right from the beginning of the reform process rather than after the legislation was essentially in place. Efforts were not in vain, however, as the consultations that did take place helped stakeholders develop an understanding of the new regime and thereby worked towards encouraging buy-in and user uptake, as further discussed below.

In the case of Peru, it was evident that there was considerable resistance to the proposed reform of secured transactions among notaries. Elimination of document review prior to registration, as exercised by notaries under the previous regime, raised concerns that the bill would generate informality and thereby undermine the controls necessary to fight money laundering and the financing of terrorism.[72] Although this would indicate an obvious need for inclusion, decisions over which stakeholder groups to include in consultations must ultimately be made by the local counterpart.

What these examples illustrate is that it is often due to a lack of capacity (that is, a lack of funds and insufficient numbers of, and inadequately trained, staff) that stakeholder consultation is incomplete or sometimes missing entirely. Improved inter-organizational collaboration can serve in a supportive role in this regard, once again, through the delivery of consistent messaging on the need for expansive stakeholder engagement, sharing communications, and strengthening relationships to build the necessary local capacity that will enable fulsome stakeholder consultations.

(iii) Training the judiciary

Whenever law reform introduces major changes, as is the case in secured transactions law reform, it must be accompanied by training of the judiciary.[73] For practical purposes and judicial sensitivities, such training is frequently conducted

[71] See section above, v. Contemporaneous Legislative Reform.

[72] For example, 1 July 2014 newspaper advertisement by College of Notaries of Lima, 'Proyecto de Ley que Afecta la Seguridad Jurídica y Fomenta a la informalidad' (Bill that affects legal security and fosters informality). On file with author.

[73] For an example, see the OAS Arbitration Project for 'training judges and other officials in the effective application of international treaties relating to the enforcement of judgements and arbitral awards' <http://www.oas.org/en/sla/dil/international_commercial_arbitration.asp>.

apart from that held for other stakeholders. This type of 'stand-alone' activity would lend itself well to inter-organizational collaboration. For example, it would be foreseeable to develop an overarching plan for capacity building in secured transactions law reform that could be delivered by different entities that would take on responsibility for different sectors. Included among the advantages to be gained would be the opportunity to leverage scarce resources.

In summary, along the continuum of activities that encompass international harmonization and codification, in the field of secured transactions, the current focus now and in the years ahead will be on Phase II and the range of activities that comprise domestic implementation. The foundations of inter-organizational collaboration that have been laid during Phase I would serve the international community and nation States very well if the same spirit and lessons learned can be applied to implementation.

3. *User uptake*

Once the domestic legislation is in place, the registry is operational, and training has been completed, the new secured transactions regime should be eagerly adopted as lenders and borrowers actually make a shift to the new system. However, this does not necessarily follow. Even if the reform process has been well planned and executed and even if there has been effective stakeholder engagement along the continuum, with capacity building that has resulted almost as a by-product, the new system requires user uptake to be fully effective.

A. *Shift in legal (and lending) culture*

Phase III encompasses activities to recognize and address the special needs of users at the business level—both borrowers and lenders—and within the context of secured transactions reforms, it includes the development and launch of new credit products. In the OAS Project as it unfolded in Jamaica, this phase became a primary focus. As was described above, because of the haste with which Phases I and II had been executed, there had not been adequate time to 'sensitize' borrowers and lenders and gain their inputs into the process. For example, while borrowers were concerned that commercial banks were not responsive to the legislative changes that would enable borrowers to use new forms of collateral, in turn, banks were concerned that the necessary amendments to regulations governing reserve requirements to enable them do so were not forthcoming from the central bank authorities.[74] As a result of this impasse, there was a general lack of interest on the part of lenders in considering prospective changes to their lending documents and practices.

Once this had been identified, it became clear that what was needed was engagement of the central banking authority and some basic, albeit specific, instruction

[74] See Giuliano G Castellano and Marek Dubovec, 'Bridging the Gap: The Regulatory Dimension of Secured Transactions Law Reforms' in this issue of the Uniform Law Review for consideration of the tension that arises due to lack of coordination between secured transactions law and capital regulatory requirements for security rights in movable assets and how to 'bridge this gap.'

on asset-based lending. These aspects were incorporated into the capacity-building activities organized by the OAS Project Team in collaboration with the Commercial Finance Association (CFA). First, a central banker's perspective was offered that included views from the US Federal Reserve Bank (San Francisco), the Central Bank of another Caribbean OAS Member State (Dominican Republic), and the Eastern Caribbean Central Bank.[75] Second, topics included, *inter alia*, the following basics of the SIPPA legislation: how it would change the lending environment and improve access to credit; how the new registry would work; basics of asset-based lending and how to use receivables and inventory as collateral; and valuation of collateral.[76] Integrated throughout the workshop were opportunities for hands-on pragmatic exercises in break-out groups comprised of a diverse mix of stakeholders and facilitated by one of the invited experts.[77] During the OAS Project activities, it became evident that both the lenders and borrowers would benefit from the development of model, or standard form, security contracts that reflect and are consistent with the new SIPPA legislation; it is known that the use of such standard forms can reduce the transaction costs and uncertainty associated with newly introduced lending practices. Accordingly, the OAS Project Team arranged for a sample loan and security agreement used by CFA to be sent to interested stakeholders in Jamaica to assist them as they begin to develop their own models.

What these experiences from the OAS Project illustrate is that, although there are commonalities, circumstances are unique and different in each State. Accordingly, as was done in this OAS Project, activities must be tailored specifically to meet local circumstances and the specific needs identified by the stakeholders themselves. While secured transactions law reform, particularly in civil law countries, requires a major shift in legal culture, it also requires a shift in lending culture, as was evident in the case of Jamaica. In that case, collaboration with the CFA and outreach to other central banking authorities was appropriate and effective in helping to meet those needs. The case also illustrates the effectiveness of inter-organizational collaboration, especially between partners that demonstrate the requisite flexibility and creativity under challenging circumstances.

III. Reflections

During the development of international standards in Phase I, the need for inter-organizational collaboration is generally well understood as being critical to achieve consistency in the development of PIL instruments, to avoid duplication of efforts, and to maximize the use of scarce resources. Such a rationale is equally

[75] Caribbean Capacity-Building Workshop on Secured Transactions and Asset-Based Lending, February 2015, Agenda <http://www.oas.org/en/sla/dil/docs/gm_jamaica_feb_2015_agenda.pdf>. Although the Bank of Jamaica had been invited to join the panel, representatives participated as members of the audience and in subsequent discussions.

[76] Ibid.

[77] Ibid.

applicable during Phases II and III. But improved inter-organizational collaboration, specifically in the field of secured transactions reforms, can also contribute as follows:

- improved coordination among entities of the local government counterpart. This, in turn, would help to avoid situations where a TAP will engage with an entity of the local government only to discover that another TAP has also been engaged, either by the same or a different entity of the local government, for assistance with either the same or related reforms (for example, insolvency);
- improved coordination among and within TAPs. This, in turn, would help to avoid situations where one TAP will be unaware of concurrent or proposed technical assistance in the same or a related topic in the same nation State either by another TAP or another department within the same TAP;
- improved conformity of domestic legislation with international standards and current practices. Concerns have been expressed over the lack of 'quality control' in the models or other templates used by some consultants in drafting proposed domestic legislation in the course of providing technical assistance;
- improved communications among States. The wealth of knowledge that is being generated by these various reform initiatives could serve as 'lessons learned' by other States at various stages in the reform process and could be better shared; and
- improved progress towards international harmonization and codification. As the long-term goal is to achieve greater uniformity among domestic laws and thereby encourage and facilitate international trade and commerce, it seems only reasonable to work collaboratively towards the same end.

In preparation for the panel on technical assistance at the UNCITRAL Colloquium, panelists were invited to consider questions on the following five topics: institutional coordination of implementation and technical assistance (as opposed to coordination of the development of texts); internal institutional coordination of reform projects; coordination with other institutions; coordination of secured transactions and related reforms; and improvement of current 'processes' for global reforms.

The first four of these topics have been largely addressed in this article. As the fifth and final topic was couched, panelists were invited to 'assume the role of God' with authorization to make one change in the current global reform process. In response, the following suggestion is offered. Given frequent acknowledgement that each organization has a unique role to play in the reform process, accordingly, each organization should be called upon—and invited—to fulfil that role; each organization should be called upon for its strengths.[78]

As was demonstrated during the course of the OAS Secured Transactions Project, even in the face of serious resource constraints and absence of consistent, long-term funding for technical assistance, the OAS enjoys recognition and

[78] Penn Conference (n 1) and UNCITRAL Colloquium (n 2).

legitimacy among OAS Member States; as a consequence, it maintains the 'power to convene'. This provided the OAS Project workshops with their unique blend of participants: broad-based participation from a wide range of local stakeholder groups, government officials and experts from other OAS Member States at various stages in the reform process, representatives from international organizations (UNCITRAL, UNIDROIT, and the IFC), and other international and regional experts from academia and the private sector. This combination of participants was unique; unlike other conferences on the subject matter that serve a different purpose, these workshops were not merely a collection of international experts. Instead, these opportunities brought 'talking heads' into dialogue with those about to be impacted by the proposed reforms. As far as can be determined, it would appear that this type of forum has not been replicated. These workshops also served as a unique way to build capacity; it was the first time that registrars from different States in Central America were brought together in the same venue for an exchange and dialogue on this subject.[79] Pursuant to this 'power to convene', OAS Member States have called attention to these issues.[80] Consequently, the OAS can serve as a regional forum to address issues in the topic that are unique to the region and thereby also advance efforts at the international level.

The OAS continues its work in the field of secured transactions reform in a spirit of collaboration. As has been described above, during the period when specific funding was available to execute the OAS Secured Transactions Project, considerable outreach was undertaken to include other organizations in various activities and workshops; such participation was welcomed and valued by all. It is always appreciated when the invitation is reciprocated, and it is hoped that the OAS will be called upon by others to play its unique role in furthering secured transactions reform in the hemisphere. This one change in the next phases of the global reform process—inclusive inter-organizational collaboration in domestic implementation could assist States in the region to make even more significant advances in secured transactions reforms and, thereby, improve access to credit in the Americas.

[79] Workshop in El Salvador brought together registrars from El Salvador, Mexico, Colombia and Guatemala; workshop in Peru included these plus the registrars from Honduras and Peru.

[80] International Law AG/RES. 2909 (n 17).