Economic Assessment of Transnational Commercial Law Reform

some thoughts

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Summary of the relevance between international commercial transactions, commercial law [national], & transnational commercial law

objectives:
- address conflicts, globalization
- economic and social good

question I: harmonized and/or better treatment in TCL?

question II: does TCL facilitate and/or produce economic benefit?

best principles?
common principles?

Transnational Commercial law
Commercial law
[Int'l] [commercial] transactions
Legal, commercial, and economic trend lines leading to Cape Town Convention

CTC 1994-2001

Parallel thinking on secured transactions

EBRD Model Law 1994

PPSA 1990-2011

UCC 1952-

4) Lex situs (legal issues)

Insolvency

6) Liquidation

Reorganization

Context theory

UNCITRAL Model law 2010

UNCITRAL legislative guide 2007

Vienna Sales Convention 1980’s

Int'l Financial Leasing and Receivables Conventions 1988

Brussels 67/93 (ship)

Geneva 1948 (air)

Brussels 1926 (ship)

Treaty line (general)

Treaty line (special: transportation related)

IMF & WB Reform

Asian Financial Crisis 1997

Emerging markets [increased economic prominence]

Int'l [increased economic global integration]

Aviation [increased demand for air transport]

Industrial + political development

3) Parallel thinking on secured transactions

3) Lex situs (legal issues)
Economic Assessment of International Commercial Law Reform

General Formula in respect of Economic Benefit

$$\text{Economic Benefit} = \left[ \text{Normative} + \text{Non Normative} \right] - \text{Z Cost of creating/transitioning to rule}$$

- **Risk reduction**
- **Applicability to transactions**
- **Compliance perceived/actual**
- **Transaction and litigation costs absent uniform harmonised rule**

**Problems with**
- Availability
- Causation
- Variables
- Disparities

**Assessment (when)**
- 1. Ex ante
  - 1.1 Project inception
  - 1.2 Adoption
- 2. Ex post

**Elements of**
See R A C T above

**Fundamental Policy Issues**

I. Are there other means to achieve EB (repeat above and compare)

II. How are EB to be weight against the retention of current law (a broader cost-benefit analysis)

III. What are the context specific limitations on quantification
Degree of harmonization of business law – summary by subject matter [includes parallelism only]

- Financial regulation
- Payment systems
- Insolvency law (business reorganizations)
- Corporate law [common principles]
- IP
- Tax
- Contract law .I [choice of law]
- Contract law .II [substantive law]
- Arbitration
- Jurisdiction and choice of forum
- Specialty property law
- Property law [including secured transactions]
- Payment systems
- Corporate law
- Insolvency law
- Arbitration
- Jurisdiction and choice of forum
- Specialty property law
- Property law

[1] Areas that are financial and global and consist of relatively new legal concepts - tend to have higher degrees of harmonization
[2] Areas where there is a powerful and relatively unified intelligentsia and/or industry support - tend to have higher degrees of harmonization
[3] Why is arbitration law is substantially more harmonized than jurisdictional law?