

Introduction to the Economic Assessment of International Commercial Law Reform Project, the Draft Framework, and Variables

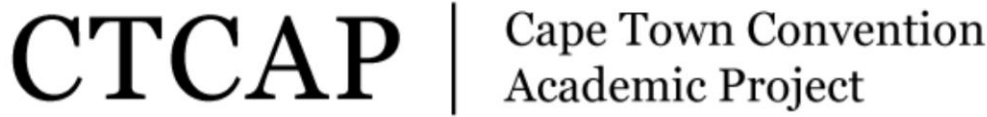
6th Workshop for the Economic Assessment of International Commercial Law Reform Project
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Project Leads:



Founding Sponsor:

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Background of the project

The Economic Assessment of International Commercial Law Reform project (EA project) was started in 2015 as a partnership between the **UNIDROIT Foundation** and **Harris Manchester College's Commercial Law Centre at Oxford University**.

The **Global Business Law Institute at the University of Washington** joined as a partner from 2017-2019.

In 2019, the project was brought within the ambit of the **Cape Town Convention Academic Project (CTCAP)** as a joint initiative between the **University of Cambridge, UNIDROIT, the UNIDROIT Foundation, and the Aviation Working Group (AWG)**.

The project has three main objectives:

- ✓ To research, collect, and assess information relating to the production of economic benefits of International Commercial Law Reform (ICLR).
- ✓ To develop guidelines for governmental economic impact and cost-benefit analyses of ICLR.
- ✓ To produce a framework on the economic assessment of ICLR.



To do this, the Project has taken an inter-disciplinary approach with involvement from industry, national governments, international organizations, legal scholars and economists.

Development

Since 2015, the Project has held 5 workshops – 3 in Oxford and 2 in Rome.

Various issues have been discussed including:



The various factors which need to be considered when measuring the economic benefits of any ICLR.



The importance of international principles, standards, or parameters for assessing economic benefits in the context of ICLR.



The relationships between the various factors, including economic, and non economic, as well as the modelling techniques already relied upon by stakeholders in this area.



The role and importance of an economic assessment.



The stages in the law reform process at which economic assessments could be conducted.



The determination of the types of agencies best suited to conduct economic assessments.



The scope of an economic assessment and its role in addressing a course of action.



The Framework

$$\underline{\mathbf{EI}} = [(\underline{\mathbf{A}} + \underline{\mathbf{B}} + \underline{\mathbf{C}}) \times \underline{\mathbf{D}}] - \underline{\mathbf{E}}$$

WITH CONFIDENCE LEVEL FROM __ [INSERT 1-5]

Where –

- **EI** is economic impact
- **A** is the net, direct impact of the new rules, rather than those applicable in the absence of reform, applied ex ante or ex post
- **B** is the net, impact of the new rules as a network, that is, the existence of international rules, applied ex ante or ex post
- **C** is the net, systemic, including developmental, impact of the new rules, rather than those applicable in the absence of reform, applied ex ante or ex post
- **D** is the extent, measured from 1 to 0, that the new rules have been or will be effectively applied by courts and authorities
- **E** is the expected (ex ante) or actual (ex post) net cost of creating and transitioning to the new rules. E does not increase over time

*The analytic framework: -

- does not address the question of how the relevant impacts will be distributed
- does not address the non-quantifiable impacts of retaining or changing existing rules
- would be applied and compared with other law reform options which seek the same objective

The Variables

Variable A

Variable A includes the direct impact of the reform – this would be the likely (in an ex ante assessment) or realised impact (in an ex post assessment).

Variable B

Variable B is defined as determining whether the law reform would create, or has created, synergies, blocks or substitution effects, with existing regulations.

Variable C

Variable C covered both partial equilibrium and global equilibrium effects and was largely a measure of the systemic effects (or “spill over effects”) of a particular reform in relation to the relevant sectors.

Variable D

Variable D has been defined as seeking to determine whether the law reform will be/has been operative or not.

Variable E

Variable E covered the transition costs of a law reform. The would include the costs of adoption of the reform, its implementation, and any required institution building.

Application of the Framework

The Framework will be applied differently depending on whether it is being used to conduct an ex ante or ex post assessment.

Conceptual phase	Negotiation phase	Pre-adoption phase	Post Adoption	Post Entry into force	Post global adoption
Ex Ante Assessment			Ex Post Assessment		

Use of the Framework for Ex Ante Assessments



The Project has discussed several models to use the Framework in different types of assessments. As part of the 5th Workshop, one use case discussed in conducting an ex ante assessment proposed to evaluate whether a proposed ICLR project would have an economic impact, each variable is to be **qualitatively assessed and given a rating**. The ratings would then be factored in the framework to obtain **an economic assessment score**.



At an ex ante stage, the framework would not provide a full quantitative economic assessment but would help to determine whether these law reform efforts were viable. Experiences from other organisations, such as the World Bank, underlined that early assessments of viability enhance the chances of a project being successful.

Application of the Framework

Category	Rating	Proposed factors to consider	Proposed sources of evidence
<p>(A)</p> <p>Direct Effects:</p> <p>The benefits that stakeholders will experience from the reform initiative.</p>	A score from 1-4	The direct effects of a legal law reform initiative are likely to be a result of factors such as the size of the market(s) affected by the law reform in terms of investment, trade flows, expenditure, and the expected change in those markets brought by the legal reform. For example, the expected fall in the interest rate at which lenders provide loans	<p>The size of the market(s) could be evaluated using trade and FDI data. There is also useful datasets on Non Performing Loans and similar.</p> <p>The expected change could be determined based on interviews with legal authorities, companies and financiers involved in the market.</p>
<p>(B)</p> <p>Network Effects:</p> <p>The benefits that will arise as more countries adopt and implement the law reform</p>	1 – 4	The expected network effects are likely to be a result of the benefit of legal harmonization across countries, and the number of countries that join.	The benefit of legal harmonization could be evaluated through discussions with general counsel at firms affected by the reform

Application of the Framework

<p>(C)</p> <p>Systemic effects: The knock on impacts of the law reform initiative</p>	<p>1 – 4</p>	<p>The systemic effects are (arguably) a function of issues such as the multiplier effects.</p>	<p>This could be evaluated using economic data sets that evaluate multiplier effects. Firms active in the markets, and economic research could provide guidance.</p>
<p>(D)</p> <p>Implementation of the law The extent, that the new rules have been or will be effectively applied by courts and authorities</p>	<p>0 – 1</p>	<p>The difficulty of implementing the law will (to some extent) be a function of the level of legal sophistication in a country, and the extent of changes required by the legal reform.</p>	<p>The general counsel at firms could provide guidance.</p>
<p>(E)</p> <p>Expenditure on establishing and implementing reform</p>	<p>1 -2</p>	<p>This will depend on the magnitude of legal reforms required, and where they will occur.</p>	<p>Past experience of international organisation's expenditures in developing ICLR, as well as a sense of what costs are required on a national level</p>
<p>(EI)</p> <p>Economic Impact score:</p>	<p>A score from -2 to 10 calculated from the results above</p>	<p>$(A+B+C)*D - E$</p>	

Application of the Framework

The economic impact score could be calculated as below. A possible rating system would be:

- (0-1) Low economic impact which implies these reforms are not pursued
- (2-3) Medium economic impact suggests reforms can be pursued
- (3-10) High economic impact likely, suggests reforms should be pursued

Use of the Framework for Ex Post Assessments

Ex post assessments would generally rely on **empirical data to reach quantitative measures of economic impact**. Further work is required to determine how the Framework will be practically applied to quantitative ex post assessments.

Myburgh and Paniagua have suggested that the variables could be repackaged as a general function of a set of variables (EA \rightarrow $f\{X_1, X_2, X_3, \dots, X_n\}$) in conducting ex post assessments (see Annex II of the 5th ICLR Workshop Report).

The 6th Workshop

The 6th Workshop was originally scheduled to take place between 31 March – 1 April 2020. However, as a result of the global COVID-19 situation, it was postponed to September. The online format has allowed us to bring together a greater number of experts to this virtual table, and has also allowed us to make Workshop open to Observers.

Alongside the Framework, the project will also produce a Guide detailing the use of the Framework in different circumstances. This will be developed further by the Project Group.

The Sixth Workshop hopes to further explore the Variables within the Framework, start developing a Draft Guide to the Framework, and focus on further identifying the methodology involved in applying the variables of the Framework to undertake an economic assessment.



**Thank you for your attention
Any Questions?**

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