


**CTCAP** | Cape Town Convention  
Academic Project

Project Leads:



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# Economic Assessment of International Commercial Law Reform

**8<sup>TH</sup> WORKSHOP, 15 September 2022**

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# Overview

- **Project Summary**
- **Introduction to the Framework and the Preliminary Draft Guide to the Framework**



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# Project Summary

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 and UNIDROIT** with the **Aviation Working Group (AWG)** as a founding sponsor.

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.



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# Focus

- Economic benefits, whether micro, macro, or developmental, are usually stated to be the central and driving objective of, and justification for, ICLR.
- But how to prove such economic benefits? What methodology could be used and what type of data would be needed to assess the economic impact of ICLR?



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# Project Development

Since 2015, the Project has held 7 workshops – 3 in Oxford and 4 in Rome.

Various issues have been discussed including:

- The objectives of an economic assessment and its importance in any ICLR process.
- The stages in the law reform process at which economic assessments could be conducted (*ex ante* and *ex post*).
- The categories of impacts (variables) and the factors which need to be considered when measuring the economic benefits of any ICLR.
- The relationships between the various factors.
- Techniques already relied upon by economists in this area.



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# The Framework

This has led to the development of a comprehensive formula to assess the economic impact of ICLR

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

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: -

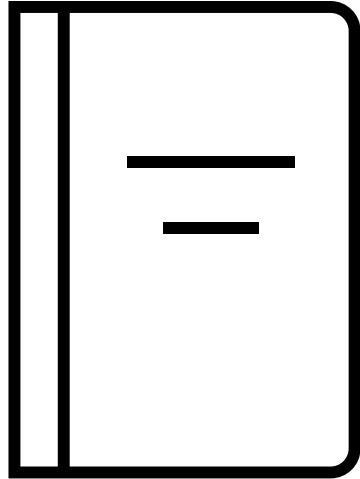
- does not address the question of how the relevant impacts will be distributed
- does not address the non-quantifiable impacts of retaining or changing existing rules
- would be applied and compared with other law reform options which seek the same objective



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# Development of a Preliminary Draft Guide to the Framework



**Guide to the Framework for the  
Economic Assessment of International  
Commercial Law Reform**

(Envisaged) content:

- Background (purpose and scope)
- Presentation of the Framework
- The Variables (A to E)
- Timing (ex ante and ex post assessments)
- Geographical context
- Nature of the law reform
- Actors
- Baseline scenario or counterfactual
- Assumptions
- Data
- Causation
- Level of confidence
- Economic assessment report



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# Purpose and scope

**Aim:**  
Facilitating the process of conducting economic assessments in the context of commercial law reforms.



Guidance to professionals in international and national organisations or governments tasked with the management or conduct of economic assessments of legal instruments in the area of commercial law.

## Scope

- International commercial law reforms (range of different fields of law)
- Reforms: introduction of new rules in the absence of legislation as well as amendments to existing laws
- Ex ante and ex post
- International, regional and domestic level



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# The Framework

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Avoid double  
counting

# Variable A

Score:  
1 to 4

The net, direct impact of the new rules, rather than those applicable in the absence of reform, applied *ex ante* or *ex post*

- Economic impact on **directly** affected stakeholders
- Requires **stakeholder mapping**
- Variable A is a **net** figure; positive and negative impacts need to be weighed against each other

Possible indicative questions:

- ✓ Under the baseline scenario, who are suffering from inefficiencies? Who are targeted to benefit from the law reform?
- ✓ To whom are the envisaged rules addressed?
- ✓ What is the size of the market(s) affected by the law reform?
- ✓ What is the (expected) change in the affected markets brought about by the legal reform?
- ✓ What is the (expected) improvement of transactions at individual level?
- ✓ Is the law reform expected to lead to compliance costs?
- ✓ Is the law reform expected to lead to increased legal certainty and predictability? If so, is this expected to affect the number of disputes and related costs?



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# Variable B

Score:  
1 to 4

The net, impact of the new rules as a network, that is, the existence of international rules, applied ex ante or ex post

- How does the law reform fit in the existing legal framework
  - Requires **mapping of relevant laws**
- Benefits arising as **more countries** adopt the law reform
- Variable B is a **net** figure

Possible indicative questions:

- ✓ With which existing laws and regulations will the law reform interact?
- ✓ How are the new rules fit expected to fit in the existing legal framework?
- ✓ How do the objectives of the law reform compare to the objectives of the existing legal framework (e.g., do they support or oppose each other)?
- ✓ What are (expected) synergies or conflicts with existing regulations?
- ✓ How many States are expected to join the initiative (e.g., (expected number of ratifications or adoptions)?
- ✓ What benefits would arise as more States adopt the law reform?
- ✓ How does the law reform affect States that are not direct addressees of the reform?



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# Variable C

Score:  
1 to 4

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

- 'Knock on' or 'spill-over' effects
- Variable C is, like variables A and B, a **net** figure
- Relevance of a certain degree of certainty

Possible indicative questions:

- ✓ With which existing laws and regulations will the law reform interact?
- ✓ Which actors are expected to be indirectly affected by the law reform?
- ✓ Which sectors are expected to be indirectly affected?
- ✓ How many different regions or countries are expected to be affected?
- ✓ How is the law reform expected to affect the labour market?
- ✓ How is the law reform expected to impact the financial markets?
- ✓ What are the expected effects on GDP?



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# Variable D

Score:  
0 to 1

The extent, measured from 0 to 1, that the new rules have been or will be effectively applied by courts and authorities

- Will the law reform be operative?
  - 'Effective application'
  - Factors impacting courts' ability to implement and enforce the law reform correctly, and factors linked to political circumstances
  - $[A + B + C] \times D$
- a) Doctrinal issues on the rule of law.
  - b) Imperfect functioning of the rule of law.
  - c) Informational limitations.
  - d) Institutional, capacity, or resource-related limitations.
  - e) Implementation-related limitations.
  - f) (Lack of) stability of the rule maker or rule applying entities.
  - g) Rapid and unpredictable changes of legal and economic structures and policy.
  - h) Intentional resistance.
  - i) The effects of signaling.
  - j) An analysis of the system as a whole.



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# Variable E

Score:  
1 to 2

The expected (*ex ante*) or actual (*ex post*) net cost of creating and transitioning to the new rule

- Costs of negotiating and adopting the new rules, their implementation, and any required institution-building
- Aspects that need to be in place according to the new rules
- $[[A + B + C] \times D] - E$
- What are the (expected) costs for negotiating and adopting the law reform? (relevant precedents could be considered)
- What are the (expected) costs for implementing the instrument? (e.g., technical assistance, capacity building)



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# Timing

<i>Ex Ante Assessment</i>			<i>Ex Post Assessment</i>		
<b>Conceptual phase</b>	<b>Negotiation phase</b>	<b>Pre-adoption phase</b>	<b>Post adoption</b>	<b>Post entry into force</b>	<b>Post global adoption</b>

- Timeframe for the assessment should take into account the nature of the law reform
- Relationship *ex ante* and *ex post* assessment
  - *Ex ante* assessment should aim to clarify what type of statistical information, indicators and information should be generated in order to facilitate an *ex post* assessment of the impacts of the law reform



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# Ex ante assessments

## Objectives

- To clarify the objective(s) of an envisaged law reform.
- To inform the decision whether a law reform should be pursued.
- To justify a regulatory initiative.
- To enhance accountability and transparency in the law-making process.
- To examine the impacts of various regulatory options, in order to inform decision-making.
- To identify potential negative economic impacts in advance in order to support their mitigation.
- To encourage the adoption and implementation of the instrument, including possible optional provisions.
- To function as an advocacy mechanism.



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# Ex ante assessments

Before assessing each of the variables:

- Explain the **need for – and objective(s) of – the proposed law reform.**
- Define the **baseline scenario** against which to measure the likely economic impact of the initiative.
- Identify **possible alternative regulatory options** to be evaluated during the assessment.

**Challenge:  
Lack of data**



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## Other contexts of use

### Geographical

- Geographical scope of the assessment

Alignment with geographical reach of the law reform

### Nature of the law reform

- Hard law vs soft law
- Promotional vs reactive law
- Broad-scale law reform



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# Identifying the baseline scenario or counterfactual

- To allow a relative assessment of the economic impact
- Baseline is the situation in the absence of the law reform
- To be compared against hypothetical situation were the law reform adopted
  - Relevance of precedents (e.g., other jurisdictions)
  - Several scenarios may be envisaged



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# Data, causation, level of confidence

- Complementarity of qualitative and quantitative data
- Data challenges at the *ex ante* phase
- Economic methods to establish causation
- Link to level of confidence (1 to 5)



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

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