

PROJECT EVALUATION SUMMARY (PES) - PART 1

Report Control
Symbol U-447

| | | | | |
|---|--|---|---|---|
| 1. PROJECT TITLE INTERNATIONAL DEVELOPMENT LAW INSTITUTE | | | 2. PROJECT NUMBER 298-0056 | 3. MISSION/AID/W OFFICE NE/TECH/SARD |
| 6. KEY PROJECT IMPLEMENTATION DATES | | | 4. EVALUATION NUMBER (Enter the number maintained by the reporting unit e.g., Country or AID/W Administrative Code, Fiscal Year, Serial No. beginning with No. 1 each FY) <u>85-3</u> | |
| A. First PRO-AG or Equivalent FY <u>82</u> | B. Final Obligation Expected FY <u>84</u> | C. Final Input Delivery FY <u>84</u> | X END OF PROJECT <input type="checkbox"/> REGULAR EVALUATION <input type="checkbox"/> SPECIAL EVALUATION | |
| 6. ESTIMATED PROJECT FUNDING | | | 7. PERIOD COVERED BY EVALUATION | |
| A. Total \$ <u>635,000</u> | | | From (month/yr.) <u>Sept. 1982</u> | |
| B. U.S. \$ <u>635,000</u> | | | To (month/yr.) <u>Aug. 1984</u> | |
| | | | Date of Evaluation Review <u>April 1985</u> | |

8. ACTION DECISIONS APPROVED BY MISSION OR AID/W OFFICE DIRECTOR

| A. List decisions and/or unresolved issues; cite those items needing further study. (NOTE: Mission decisions which anticipate AID/W or regional office action should specify type of document, e.g., airgram, SPAR, PIO, which will present detailed request.) | B. NAME OF OFFICER RESPONSIBLE FOR ACTION | C. DATE ACTION TO BE COMPLETED |
|---|---|--------------------------------|
| 1) Officially circulate evaluation in final form | NE/TECH/SARD | May 1985 |
| 2) Recommend Advisory Committee meeting of NE and AFR Bureaus to review findings and possible consequences for further AID support | NE/TECH/SARD | May 1985 |
| 3) Recommend future blanket waiver for USAID funding of participant training at IDLI | NE/TECH/SARD to S&T/IT | May 1985 |
| 4) Recommend AID clarification of IDLI's status as a PVO | NE/TECH/SARD to FVA/PVC | May 1985 |

9. INVENTORY OF DOCUMENTS TO BE REVISED PER ABOVE DECISIONS

| | | |
|--|--|--|
| <input type="checkbox"/> Project Paper | <input type="checkbox"/> Implementation Plan e.g., CPI Network | <input type="checkbox"/> Other (Specify) |
| <input type="checkbox"/> Financial Plan | <input type="checkbox"/> PIO/T | _____ |
| <input type="checkbox"/> Logical Framework | <input type="checkbox"/> PIO/C | <input type="checkbox"/> Other (Specify) |
| <input type="checkbox"/> Project Agreement | <input type="checkbox"/> PIO/P | _____ |
| X NONE | | |

10. ALTERNATIVE DECISIONS ON FUTURE OF PROJECT

| |
|---|
| A. <input type="checkbox"/> Continue Project Without Change |
| B. <input type="checkbox"/> Change Project Design and/or <input type="checkbox"/> Change Implementation Plan |
| C. <input type="checkbox"/> Discontinue Project N/A |

11. PROJECT OFFICER AND HOST COUNTRY OR OTHER RANKING PARTICIPANTS AS APPROPRIATE (Names and Titles)

NE/TECH/SARD: JGrayzel
 NE/TECH/SARD: WMiner
 GC/NE: GDavidson
 AFR/GC: TBozin

12. Mission/AID/W Office Director Approval

Signature
 Typed Name
 NE/TECH, KHSherper
 Date
 5/2/85

NEAR EAST EVALUATION ABSTRACT

Official A/E file

| | |
|--|--------------------------------------|
| PROJECT TITLE(S) AND NUMBER(S) INTERNATIONAL DEVELOPMENT LAW INSTITUTE (IDLI) 298-0056 | MISSION/AID/W OFFICE NE/TECH/SARD |
|--|--------------------------------------|

PROJECT DESCRIPTION
This project was designed to create a new international institute devoted to improving the performance of legal personnel and the contribution of the legal process to development activities through the provision of specialized training, technical assistance, and the establishment of a development law document center.

| | | | |
|--|---|-------------------------|---|
| AUTHORIZATION DATE AND U.S. LOP FUNDING AMOUNT | PES NUMBER 85-3 | PES DATE May 3, 1985 | PES TYPE <input type="checkbox"/> Regular <input type="checkbox"/> Other (Specify) <input type="checkbox"/> Special <input checked="" type="checkbox"/> Terminal |
| ABSTRACT PREPARED BY, DATE NE/TECH/SARD, JGrayzel | ABSTRACT CLEARED BY, DATE NE/TECH/SARD, WRMiner <i>[Signature]</i> NE/TECH, KSherper <i>[Signature]</i> | | |

BACKGROUND: AID's Near East and Africa Bureaus jointly funded this grant to AMIDEAST for the establishment of the International Development Law Institute (IDLI), devoted to upgrading the skills of development country legal personnel and processes. IDLI was the idea and creation of two USAID/Egypt Legal Advisors, L. Michael Hager and William T. Loris, and Gilles Blanchi, a French colleague.

STATUS: AID's contribution provided for (1) start-up funds to allow the establishment of a legal charter, (2) the constitution of a supervisory board, (3) the successful solicitation of substantial financial support from other donors and user nations, and (4) the implementation of a first-year training program. At the completion of its initial two-year grant period, IDLI had accomplished these tasks, including the raising of over \$2 million of additional donor funds. By summer 1984 IDLI had already made a significant, albeit limited, contribution to increasing the competence of more than 95 participants from the public and private sectors of over 35 countries in various aspects of public and private development law and legal skills. Trainees came from Africa, the Near East, Latin America and Asia. Responses to a worldwide cable requesting participant/USAID feedback were overwhelmingly favorable and, together with associated communications, provided substantial evidence of USAID and host country interest in expanding future use of IDLI services.

RECOMMENDATIONS: The evaluation concluded that within IDLI's success to date lies several substantial unresolved challenges that should be addressed by the Institute and AID. A permanent solution has yet to be found to the problem of the recurring hiatus in daily operating funds due to delayed payments that may increase with successful program expansion. On a more programmatic level, while IDLI has defined long-term goals, its intermediate strategy for the next three to five years may be excessively responsive to and potentially captive of resource constraints and funding opportunities, rather than independently determined by development priorities. AID should carefully consider whether it wishes to provide a further commitment to help assure the permanent institutionalization of IDLI and the advisability of it either taking an active role in further influencing the Institute's final program configuration or relinquishing this responsibility and opportunity to other supporters. At the same time, now would seem a propitious time for a new look at, and an expanded understanding of, the present and potential role of law, legal personnel and legal institutions in the development process in general, and the role of AID's own lawyers in particular, both in and outside of IDLI.

LESSONS LEARNED: IDLI's impressively rapid passage from concept to performance to acceptance makes it per se a worthy case study in the mechanisms and strategies of successful institutional development. IDLI represents a unique example of how creativity and entrepreneurship on the part of AID's own employees, when backed by Agency decision-makers willing to take organizational risks and individual responsibility, can result in substantial new contributions to, and needed innovation in, the development process itself.

XD - PAR - 421 - A
ISN 40524

EVALUATION
OF
INTERNATIONAL DEVELOPMENT LAW INSTITUTE
ROME, ITALY

MAY 1985

The views and interpretations expressed in this report are those of the author and should not be attributed to the Agency for International Development

NEAR EAST EVALUATION ABSTRACT

| | | | |
|--|--|--|---|
| PROJECT TITLE(S) AND NUMBER(S) INTERNATIONAL DEVELOPMENT LAW INSTITUTE (IDLI) 298-0056 | | MISSION/AID/W OFFICE NE/TECH/SARD | |
| PROJECT DESCRIPTION This project was designed to create a new international institute devoted to improving the performance of legal personnel and the contribution of the legal process to development activities through the provision of specialized training, technical assistance, and the establishment of a development law document center. | | | |
| AUTHORIZATION DATE AND U.S. LOP FUNDING AMOUNT | PES NUMBER 85-3 | PES DATE May 3, 1985 | PES TYPE <input type="checkbox"/> Regular <input type="checkbox"/> Other (Specify) <input type="checkbox"/> Special <input checked="" type="checkbox"/> Terminal |
| ABSTRACT PREPARED BY, DATE NE/TECH/SARD, JGrayzel <i>JG</i> | ABSTRACT CLEARED BY, DATE NE/TECH/SARD, WRMiner <i>WR</i> NE/TECH, KSherper <i>K</i> | | |
| <p>BACKGROUND: AID's Near East and Africa Bureaus jointly funded this grant to AMIDEAST for the establishment of the International Development Law Institute (IDLI), devoted to upgrading the skills of development country legal personnel and processes. IDLI was the idea and creation of two USAID/Egypt Legal Advisors, L. Michael Hager and William T. Loris, and Gilles Blanchi, a French colleague.</p> <p>STATUS: AID's contribution provided for (1) start-up funds to allow the establishment of a legal charter, (2) the constitution of a supervisory board, (3) the successful solicitation of substantial financial support from other donors and user nations, and (4) the implementation of a first-year training program. At the completion of its initial two-year grant period, IDLI had accomplished these tasks, including the raising of over \$2 million of additional donor funds. By summer 1984 IDLI had already made a significant, albeit limited, contribution to increasing the competence of more than 95 participants from the public and private sectors of over 35 countries in various aspects of public and private development law and legal skills. Trainees came from Africa, the Near East, Latin America and Asia. Responses to a worldwide cable requesting participant/USAID feedback were overwhelmingly favorable and, together with associated communications, provided substantial evidence of USAID and host country interest in expanding future use of IDLI services.</p> <p>RECOMMENDATIONS: The evaluation concluded that within IDLI's success to date lies several substantial unresolved challenges that should be addressed by the Institute and AID. A permanent solution has yet to be found to the problem of the recurring hiatus in daily operating funds due to delayed payments that may increase with successful program expansion. On a more programmatic level, while IDLI has defined long-term goals, its intermediate strategy for the next three to five years may be excessively responsive to and potentially captive of resource constraints and funding opportunities, rather than independently determined by development priorities. AID should carefully consider whether it wishes to provide a further commitment to help assure the permanent institutionalization of IDLI and the advisability of it either taking an active role in further influencing the Institute's final program configuration or relinquishing this responsibility and opportunity to other supporters. At the same time, now would seem a propitious time for a new look at, and an expanded understanding of, the present and potential role of law, legal personnel and legal institutions in the development process in general, and the role of AID's own lawyers in particular, both in and outside of IDLI.</p> <p>LESSONS LEARNED: IDLI's impressively rapid passage from concept to performance to acceptance makes it <u>per se</u> a worthy case study in the mechanisms and strategies of successful institutional development. IDLI represents a unique example of how creativity and entrepreneurship on the part of AID's own employees, when backed by Agency decision-makers willing to take organizational risks and individual responsibility, can result in substantial new contributions to, and needed innovation in, the development process itself.</p> | | | |

(0016h)

1

EVALUATION OF INTERNATIONAL DEVELOPMENT LAW INSTITUTE

TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| I. INTRODUCTION | 1 |
| II. BACKGROUND | 2 |
| A. Origin and Organization | |
| 1. Hager, Loris and Bianchi | |
| 2. Dr. Ibrahim F.I. Shihata | |
| 3. Role of AMIDEAST | |
| 4. Location in Rome | |
| 5. Original AID Grant | |
| B. Modus Operandi | |
| 1. Ongoing Administration | |
| 2. Board of Directors | |
| III. ORIENTATION AND CURRICULUM | 5 |
| A. Announced Goals | |
| B. Initial Strategies | |
| C. Present Offerings | |
| D. Future Plans | |
| IV. FINANCIAL SITUATION | 9 |
| A. Original AID Funding | |
| B. Other Donors | |
| C. Operating Costs | |
| D. Problems | |
| 1. Financial | |
| 2. Mechanical/Administrative | |
| 3. Structural | |
| a. Lack of Endowment | |
| b. Innovation versus Institutionalization | |
| c. Clients and Patrons | |
| d. Location | |
| V. ASSESSMENT OF PERFORMANCE AND VALUE | 17 |
| A. USAID and Participant Reactions | |
| 1. Swaziland | |
| 2. Ghana | |
| 3. Cameroon | |
| 4. USAIDs | |
| B. The Value of IDLI | |

| | | |
|-----------------------------|--|----|
| VI. | OUTSTANDING QUESTIONS | 23 |
| | A. Program Mix | |
| | B. Relation to Individual Donors | |
| VII. | MAJOR AID POLICY ISSUES | 26 |
| | A. Relation of the Development of Legal Systems and Skills to AID's Mandate and Programs | |
| | B. Use of Law and Lawyers within AID | |
| VIII. | SYNOPSIS OF IDLI NEEDS | 28 |
| | A. Need for Assured Intermediate (five years) and Long-Term (ten years) Operating Support | |
| | B. Need for a Clear Intermediate (five year) Strategy and Precise Goals | |
| | C. Clarification of Relation to Specific Primary Donors and Other Special Parties | |
| | D. Need for Determination of Geographic Focus | |
| | E. Need for Reinforcement of Staff and Expertise Both Internally and Through Expanded Collaboration with Other Organizations | |
| IX. | SUGGESTIONS FOR ALTERNATIVE RESPONSES FOR AID CONSIDERATION: PROS AND CONS | 30 |
| | A. No Further Assistance | |
| | B. AID Representation on the Board | |
| | C. Participation of AID Personnel: LWOP, Detailing, TDYs, Participant Trainees | |
| | D. AID Opportunistic Support | |
| | E. AID Long-Term Grant or Project Support | |
| | 1. Mission Projects | |
| | 2. Regional Projects | |
| | 3. Worldwide Projects | |
| X. | SPECIAL ISSUE | 34 |
| | | |
| <u>ANNEXES (unattached)</u> | | |
| A. | IDLI Annual Report 1983-84 | |
| B. | AID Worldwide Cable Inviting USAID/Participant Training Comments, 84 STATE 246750 | |
| C. | Selected USAID/Participant Trainee Responses | |

I. INTRODUCTION

On August 31, 1982, the U.S. Agency for International Development (AID) signed an agreement with America-Mideast Education and Training Services, Inc. (AMIDEAST) for the establishment of the International Development Law Institute (IDLI). The agreement called for a simple evaluation by AID at the end of the funding period to determine whether the initial work plan had been achieved, if assurance of continued financial support had been obtained, and the level of interest and participation generated on the part of the public and private sectors of client countries.

This evaluation is intended in a small measure to directly answer those three simple questions. To a much larger extent, it is directed to asking in what direction AID should now proceed in light of: (1) generally strong affirmative response to these questions, (2) the now apparent need for longer term assistance if IDLI's promising start is to become a durable accomplishment, (3) the somewhat unique example the entire IDLI experience represents of the encouragement by AID for the exercise of development entrepreneurship by some of its employees and collaborating donors and individuals, and (4) the growing need and momentum for more focused assistance to issues of law and development.

Given the individual nature of this document, I have purposely avoided making precise recommendations, in favor of suggesting possible alternatives that might be considered by a larger study or decision group, should this be deemed warranted. I have tried, to the extent possible, to incorporate ideas and judgments on IDLI as relayed to me by other AID personnel, the IDLI staff, USAIDs, participant trainees and other concerned third parties.

Finally, it should be noted that IDLI's Annual Report 1983-84, annexed to this paper, is itself an excellent review and orientation to the organization. For the sake of logic and inclusiveness some of what it says has been repeated in this evaluation. However, what the Annual Report does not say is perhaps as important as what it does say, and it is many of these missing areas of discussion that this document addresses.

An accepted adage of bureaucratic strategy is that you cannot be blamed for a missed opportunity because nobody can really prove that you or the opportunity would have succeeded, but you will definitely be blamed for taking a risk that fails because by dint of failure, in hindsight, it proves to have been a bad choice. The bureaucratic golden rule, therefore, is to avoid risks at the cost of lost opportunities. The IDLI report, for understandable reasons, does not highlight the risks that numerous concerned individuals and organizations did take, especially in grey areas of financial, administrative and personnel practices, that are responsible for the project's success to date. A choice has been made to give these some prominence in this evaluation in the belief

that, without such an understanding of what seems to have really happened, the true lessons to be learned, as well as the courage to proceed, may be lost.

II. BACKGROUND

Bureaucratically IDLI's relation with AID began by the submission in late 1981 to AID of a proposal by L. Michael Hager and William T. Loris to create an international development law institute. In June 1982, the Assistant Administrators of the Near East and the Africa Bureaus approved \$500,000 for a one-year grant, subject to the willingness of an appropriate organization to be financially accountable as a recipient of funds. Several such organizations and 8(a) firms were contacted to fulfill the function but only AMIDEAST indicated interest. AMIDEAST followed up with a formal request in July 1982 for a Specific Support Grant (SSG). On August 18, 1982, AID approved joint Near East/Africa Bureaus funding of the SSG.

A. ORIGIN AND ORGANIZATION

1. Hager, Loris and Blanchi

The idea for IDLI itself apparently stems from the combined thinking of L. Michael Hager, William T. Loris, and Gilles Blanchi, while Hager and Loris were USAID Legal Advisors in Egypt and Blanchi was Director of the Economic, Legal and Social Documentation and Studies Center at the French Embassy in Cairo. All three represent legal professionals with significant practical as well as academic comparative law experience. Thus the idea for an international development law institute was evolved by those who had experienced the need, and was designed by those who would be responsible for implementing it. Such a situation represents an ideal rarely achieved in development project creation and, in the case of AID employees, rarely permitted since it seems to contravene the Agency's conceptual and administrative differentiation between direct-hire administrators/managers and contractor implementers.

2. Dr. Ibrahim F.I. Shihata

One of the first individuals approached with the idea and solicited for personal assistance was Dr. Ibrahim F.I. Shihata, then Director General of the OPEC Special Fund and now Vice President and General Counsel of The World Bank, who later became Chairman of the Board of IDLI. Dr. Shihata's importance is not only for the direct role he played in helping obtain support to establish IDLI (as have many others), but also in what he represents as one of a group of importantly placed legal personalities who themselves directly shared the motivating concerns behind IDLI and who, because of competing responsibilities, have not been in a position to translate this perceived need into direct action prior to IDLI's offering the organization nexus to do so.

3. Role of AMIDEAST

The present grant is managed by AMIDEAST in that AID funds are passed through it to IDLI, which is legally a subgrantee. This arrangement is in accordance with the original project authorization that required funds to be administered by a suitable financially accountable organization. Besides serving the specific function, AMIDEAST has also provided logistic assistance to IDLI as requested and, at a crucial moment, advanced its own funds to assure the program's uninterrupted continuation. At an overall charge of approximately \$18,000 (\$6,000 overhead plus \$12,000 for specific professional services) for a total project budget of \$635,000, the services of AMIDEAST seem deserving of special commendation. Since its initial conception, IDLI has obtained legal status as a nonprofit and nongovernmental international organization in the Netherlands (The Hague), Italy and the U.S.A. (District of Columbia). As such the original fiduciary necessity for using AMIDEAST no longer exists. However, in terms of the convenience of having a U.S. agent, the actual services rendered, and the potential value to IDLI of AMIDEAST's contacts and expertise, it would seem advisable not to discount the merits of continuing the association for future program support.

4. Location in Rome

IDLI's headquarters are presently in Rome. Justifications given for the selection of this site are Italy's central location -- especially in terms of ease and economy of air travel to the Middle East and African countries, the initial targets of IDLI's program -- and the location in Rome of several immediate and potentially important supporting institutions (e.g., FAO, IFAD, and the International Institute for the Unification of Private Law). Certainly also important has been the responsive support given by the Italian Government (e.g., rent-free headquarters). Not mentioned but foolish to deny is the attractiveness and convenience of Rome to the numerous individuals on whom IDLI now depends, and increasingly will depend for either voluntary or minimally-recompensed assistance as teachers and consultants. Finally, as IDLI becomes more of a worldwide rather than regional institute, the idea that it should be ipso facto located in either Africa or the Middle East becomes less tenable and practical.

In truth the choice of Rome appears to be one of the critical realistic, if not idealistic, decisions that have contributed to IDLI's ability to so rapidly become functional and popular. The only apparent disadvantage stems from USAID regulations that require differentiating between third-country and developed-country training institutions, based on geographic location rather than on purpose or organization, and require a special waiver for AID-financed use of the latter.

5. Original AID Grant

Though AID has not been the largest contributor to IDLI, it deserves credit as the founding grantor. It appears that it played this role with full awareness

of the risk being taken and without an agreed-upon strategy for long-term support. Therefore, to prudently limit its implied as well as contractual liability, AID noted that it considered the original \$500,000 a one-shot starting grant and that the organization's continuation would be dependent on its ability to obtain alternative future funding. Further AID assistance, if any, was seen as coming in the third year after evaluation of the results to date. At the same time, it was evident to others that logically one doesn't invest a half million dollars in an activity without a sense of its importance that would also argue for further assistance if justified. One year is an almost infinitesimal timeframe in terms of institutional development and hardly adequate to go from birth to self-supporting maturity.

This situation became abundantly clear when IDLI requested an additional \$135,000 in FY 1984 to allow continued operation during a critical lacuna between the exhaustion of original grant funds and the receipt of other donor funding which was due but not yet received. At that time AID made clear that it expected IDLI to develop as rapidly as possible a long-term financial policy that would assure coverage of normal operating costs on a sustainable basis. At the same time, the AID Review Committee noted that the authorization of the new funds implied a limited but continued AID commitment to IDLI, provided its development progressed as indicated.

B. MODUS OPERANDI

1. Ongoing Administration

According to its Bylaws, IDLI is to be managed by a Director appointed by the Board for a five-year term, who will himself appoint up to six program legal counsels. For the time period covered by this evaluation these officers were: Hager, L. and Blanche, respectively. (Since then, a fourth officer, Abdelhafidh Ellouze, has been appointed.) In daily operations, the Institute has been run largely as a triumvirate, with the three concerned parties sharing not only administrative tasks but jointly formulating and implementing the organization's policies and practices during its critical formative stage.

Precisely because it does not yet have a well-established role and the related practices that only come with time, there is not a clear separation between the existence of the institution and that of its guiding personalities. Substantial efforts are being directed to effect this evolution through expanding the number of top administrators, through the recruitment of strong and diverse people for the Board and through the exploitation of every opportunity to incorporate new individuals and organizations into IDLI's network of contributors of funds, services or ideas. (Ultimate plans are for five program legal counsels representing France, Italy, the U.S., the Arab world and Africa.) In this sense its founding members have exhibited an admirable restraint on what would be a natural tendency to proprietorship. Given this, it seems necessary to weigh carefully the need for continuity in personnel during this initial development phase and take the necessary actions to prevent a disruption through a premature "changing of the guard."

2. Board of Directors

IDLI's first convened its Board of Directors on March 18, 1983, in Vienna. At that time, Dr. Ibrahim Shihata was elected Chairman and Mrs. W. Antoinette Ford and Dr. Hans Blix were elected Vice-Chairmen. IDLI's present Board of Directors is listed in its 1983-84 Annual Report. Besides their normal functions as board members (e.g., approving annual work plans, budgets, and financial statements, authorizing borrowing, and appointing the Institute's Directors, etc.), many of them in varying degrees have played an important role in extending the Institute's fledgling reputation and making important connections between it and potential donors. As the Institute becomes more established board members will no doubt increasingly influence IDLI's direction and orientation. It is also likely that in the future further crucial decisions will have to be made to assure adequate representation among its limited membership -- that is, in terms of subject expertise and geographic, donor and user origins.

The original participation of the AID Assistant Administrator for the Near East, W. Antoinette Ford, and her subsequent regrettable, even if prudent, resignation to avoid the appearance of conflict of interest, is representative of the delicacies of the situation. In fact, as with so many other situations, it has been the artful navigation of such circumstances that has apparently led to IDLI's success to date. Unfortunately, it is also likely in the very nature of institutional development that (as demonstrated by Mrs. Ford's resignation), as IDLI becomes more institutionalized the reaction of its governmental and organizational support will become more formal and bureaucratic and lose the valuable flexibility exercised to date. At best, one can hope such flexibility will never totally disappear; at least one must hope it will be retained during the several crucial years to come.

III. ORIENTATION AND CURRICULUM

A. ANNOUNCED GOALS

According to Article II of its Bylaws, the announced purposes of the Institute are:

- 1) To encourage and facilitate the deployment of legal resources in the development process.
- 2) To improve the negotiating capability of developing countries in the fields of development assistance, foreign investment and international trade.
- 3) To increase the efficiency of development project implementation.

- 4) To promote and assist in the simplification and harmonization of rules and procedures related to external financing.
- 5) To encourage and facilitate the use of comparative law materials in law reform and legal modernization.
- 6) To provide opportunities for continuing education to members of the legal communities in developing countries.

To achieve these purposes, Article II of the Bylaws also authorizes the Institute to engage in any or all of the following activities:

- a) Conducting of training programs, conferences, forums, workshops and seminars on topics related to the Institute's purposes.
- b) Provision of technical assistance on legal aspects of development.
- c) Establishment and operation of a documentation center, which will specialize in the collection and retrieval of international and comparative law materials related to development assistance, foreign investment and international trade and selected laws of developing countries.
- d) Research on practical legal aspects of economic and social development and promotion of the role of law in the development process.
- e) Publication and dissemination of training, technical assistance and research materials relating to the programs of the Institute.
- f) Assistance in the development of appropriate educational, research and extension arrangements with other institutions and with developing countries to facilitate the use and application of the work of the Institute.
- g) Such other activities as the Board may deem necessary to further the purposes of the Institute.

B. INITIAL STRATEGIES

IDLI's announced goals are an ambitious charter for its own progressive development. It has begun its program with a much more selective focus of providing a few selected training opportunities chosen on the Institute's perception of what is needed and desired matched to the existing expertise of its permanent and visiting staff.

To initiate its program, L. Michael Hager and Gilles Blanchi took several trips to twenty-three countries, during which they met with potential donors

and clients, eliciting their interests and acquainting them with the Institute. Countries visited were Italy, France, West Germany, Norway, Sweden, Great Britain, the Netherlands, Belgium, Canada, the U.S.A., Kuwait, Tunisia, Jordan, Ethiopia, Sudan, Egypt, Algeria, Senegal, Ivory Coast, Cameroon, Tanzania, Zimbabwe, and Kenya. Organizational contacts include AID, EEC, UNDP, World Bank, BADEA, Arab Fund, Kuwait Fund, local bar associations and law faculties. At the same time, the Institute adeptly drew on the expansive network of its staff, Board and friends to recruit associated expertise, visiting staff, and supporting funds. Not surprisingly its initial offerings reflected the personal background of its supporters and many of the course materials were derived from working and background documents of their parent organizations.

IDLI's deft informal use of formal mechanisms is also demonstrated in its use of established organizational and diplomatic communication channels to publicize its course offerings. For example, it is the AID/FAO representative at the U.S. Embassy in Rome who transmitted and received communications on behalf of IDLI with USAIDs worldwide. This method, with variation, is exploited with the missions of other countries and organizations. It is rapid, highly flexible and cheap. It is not, however, at least as demonstrated to date, particularly conclusive to encouraging long-term planning that permits potential clients to know well ahead of time what is available and to make all necessary arrangements. The lead time between publicity for a course and registration for the course itself has sometimes been only a matter of weeks, when in many underdeveloped countries training funds must be budgeted many months ahead of time. While this is largely due to the fact that during its first year the Institute staff was developing as well as giving its courses, nevertheless, the ad hoc nature of the situation should (and indications are it will) be remedied as soon as possible.

C. PRESENT OFFERINGS

As of August 1984, IDLI had given four courses: 1) Negotiating a Petroleum Exploration and Development Agreement (one in French, one in English), 2) Leasing Equipment Internationally (in French), and 3) a Development Lawyers Course (in English). Each averaging more than twenty participants, these courses in toto trained 92 participants from 39 countries, including Europe, Asia, and Latin America. Instructors came from eight countries, two private corporations and five international organizations. Visiting faculty included some distinguished academics but most were mainly public or private practitioners.

The importance of this last fact should not be overlooked. While IDLI provides training, its training focus, materials and personnel, and therefore, its overall dynamic seem to come more out of the world of the practitioner than that of the teacher. (Many of the materials, for example, are

regulations, policies or cases from donor organizations.) While not one of its stated purposes -- in fact one of the Institute's most valuable potentials -- is its offering of a unique forum for diverse practitioners to analyze and reflect together on some of the basic rules and regulations that govern the daily business of international development. Since many of those participating (both instructors and students) presently or potentially occupy significant positions in forming and applying these practices, the lessons being learned may have significant long-term influence beyond any immediate purpose of the course in question.

D. FUTURE PLANS

IDLI's future goals are reflected in the previously quoted section of Article II of its Bylaws. However, goals are at best distant targets. More germane than goals to immediate success or failure is the viability of the intended strategies to get there. IDLI's strategy since obtaining the original AID grant seems to have been to successively "leap frog" needs and resources as a method of reaching its destination. It has used available resources to expand its offerings, then created new demands that modestly exceed its available funds (i.e., recruit more students than scholarships), then solicited new funds to meet those costs. It would appear that this strategy will continue in the near term until IDLI is able to assemble what it considers a minimally adequate package of personnel, courses, resources, and ancillary activities to feel able, at least temporarily, to stop expansion and consolidate its position. At the moment the apparent feeling is that IDLI is still not a complete enough entity to do this and maintain credibility as a permanent international institution. It needs more personnel at all levels, larger and more assured operating fundings, more dependable sources of scholarship, and the development of at least a minimal outreach program of applied consultancies.

Immediate future plans include movement on all these fronts. The addition of Abdelhafidh Ellouze (Tunisian) as a third Program Legal Counselor represents an important staff addition. An attempt (which did not finalize) was made to provide specific training in Tunisia, in relation to planned reform of governmentally controlled agricultural lands, and promising increased effort is being directed towards obtaining private corporate support. Evidence is that this approach will continue into the foreseeable future, its specific rapidity determined by a combination of limited funding and the already over-extended capacity of its present staff.

Given its qualified success to date one would be hard put to challenge IDLI's relevancy or appropriateness. However, while it might not dramatically effect IDLI's immediate modus operandi, at some point the Institute should clearly define for both its own purposes, programming needs, and donor and client confidence, the minimal position of adequate permanence (in terms of program, personnel and finances) from where it will switch from a creative-reactive building strategy to a consolidation and routinization of a core program.

IV. FINANCIAL SITUATION

A. ORIGINAL AID FUNDING

IDLI began with original seed funding of \$500,000 from AID for its first year. This sum was never intended to suffice for prolonged operations of the Institute. Rather it was viewed as the minimal basis necessary to provide time and resources for its founders to spread the word, establish themselves administratively as an Institute, and obtain alternative future funding. A year later IDLI had obtained pledges of \$1.9 million from other donors, a substantial amount by most standards. However, because of restrictions in use and delay in payment of these pledges, IDLI found itself at the end of its first year, in a financial crunch which threatened its ability to fund continued daily operations. AID responded with a new grant of \$135,000 to tide the Institute over until it received the sums due and owing.

B. OTHER DONORS

Several other donors have become major supporters of the Institute, as listed below:

LIST OF GRANTS PLEDGED AND RECEIVED TO DATE
August 31, 1982 to May 9, 1984
(U.S.\$)

| <u>GRANTOR</u> | <u>TYPE</u> | <u>PLEGDED</u> | <u>RECEIVED</u> |
|----------------------|--------------|----------------|-----------------|
| USAID | Unrestricted | 500,000 | 500,000 |
| USAID | Unrestricted | 135,000 | 40,000 |
| CIDA | Restricted | 82,000 | 73,150 |
| OPEC Fund | Restricted | 200,000 | 200,000 |
| IBRD | Unrestricted | 20,000 | 20,000 |
| Kuwait Fund | Unrestricted | 102,800 | 102,800 |
| Kuwait Fund | Endowment | 409,000 | 409,000 |
| IDRC | Restricted | 10,600 | 10,600 |
| Govt. of Italy | Unrestricted | 900,000 | - |
| Arab Fund | Endowment | 70,000 | - |
| Govt. of Netherlands | Restricted | 80,000 | 16,800 |
| Govt. of Netherlands | Unrestricted | 50,000 | 25,000 |
| Totals | | 2,559,400 | 1,397,350 |

Besides AID, particularly important donors have been the Government of Italy and the Kuwait Fund. Including the value of the Institute's Rome premises, which the Government of Italy is paying for, Italy's pledge is over \$1 million through 1986. Kuwait has given slightly over \$500,000 to date. In addition to the funds listed other funds for training support have come from Abu Dhabi, Austria, France, Norway, EEC, Third World Foundation, UNIDO, World Bank, Italian National Petroleum Corporation (AGIP) and Saga Petroleum Corporation. Partial or complete self-financing of trainees has been provided by Burundi, Gabon, Italy, Mauritania, Mauritius, People's Republic of China, Tunisia, and Petroleum Corporation of Morocco (ONAREP), Senegal (PENROSEN), Cameroun (S.M.& L.) and Italy (TOTAL).

Among the most interesting groups included above are several private international businesses. While to date private corporate expenditures would seem to be being made in their own interests, IDLI is now in the process of attempting to expand corporate understanding of self-interest to include the basic existence and quality of IDLI itself and to obtain corporate sponsorship of its general program.

C. OPERATING COSTS

IDLI's financial situation, as regards its operating costs and revenues, has been a major overriding constraint on both program development and institutionalization.

The following chart is IDLI's own assessment of its present (as of June 1984) and future financial situation:

STATEMENT OF BUDGET AND PROJECTED REVENUES FOR THREE YEARS (U.S.\$ Thousands)

| | <u>1984</u> | <u>1985</u> | <u>1986</u> | <u>Total</u> |
|---------------------------|-------------|-------------|-------------|--------------|
| General & Administrative | 476 | 616 | 703 | 1795 |
| Program Expenses | <u>519</u> | <u>678</u> | <u>762</u> | <u>1959</u> |
| Total Budget Requirements | <u>995</u> | <u>1294</u> | <u>1465</u> | <u>3754</u> |

Its current three-year budget is as follows:

| <u>THREE-YEAR BUDGET</u> | | | | |
|--|-------------|-------------|-------------|--------------------------|
| (U.S.\$ 000) | | | | |
| | <u>1984</u> | <u>1985</u> | <u>1986</u> | <u>Total 3 Years</u> |
| GENERAL & ADMINISTRATIVE | | | | |
| Salaries and benefits | 283 | 404 | 452 | 1139 |
| Office Rent and Maintenance | 60 | 48 | 57 | 165 |
| Equipment rental and office supplies | 30 | 36 | 43 | 109 |
| Communications, postage, courier | 20 | 24 | 30 | 74 |
| Consultants | 15 | 18 | 21 | 54 |
| Travel and meetings | <u>25</u> | <u>30</u> | <u>36</u> | <u>91</u> |
| Subtotal | 433 | 560 | 639 | 1632 |
| Contingency 10% | <u>43</u> | <u>56</u> | <u>64</u> | <u>163</u> |
| TOTAL G & A | 476 | 616 | 703 | 1795 |
| PROGRAM | | | | |
| Program coordination and training | 140 | 216 | 242 | 598 |
| Instructors (honorarium, travel, per diem) | 94 | 122 | 146 | 362 |
| Training site rent and maintenance | 5 | 30 | 36 | 71 |
| Supplies and materials | 30 | 36 | 43 | 109 |
| Communications, postage and courier | 20 | 24 | 30 | 74 |
| Program coordination travel | 15 | 18 | 21 | 54 |
| Insurance and other program expenses | <u>16</u> | <u>19</u> | <u>23</u> | <u>58</u> |
| Subtotal | 320 | 465 | 541 | 1326 |
| Contingency 10% | 32 | 46 | 54 | 132 |
| Operations Reserve | <u>16</u> | <u>167</u> | <u>167</u> | <u>501</u> |
| TOTAL PROGRAM | <u>519</u> | <u>678</u> | <u>762</u> | <u>1959</u> |
| TOTAL IDLI BUDGET | 995 | 1294 | 1465 | 3754 |

Its projected revenues are as follows:

| <u>PROJECTED REVENUES</u> | | | | |
|-----------------------------------|-------------|-------------|-------------|--------------|
| <u>(U.S.\$000)</u> | | | | |
| | <u>1984</u> | <u>1985</u> | <u>1986</u> | <u>Total</u> |
| <u>MULTI-YEAR GRANTS PLEDGED</u> | | | | |
| Govt. of Italy contributions | | | | |
| --General | 294 | 294 | 294 | 882 |
| --Premises | 58 | 58 | 58 | 174 |
| Govt. of Netherlands contribution | <u>52</u> | <u>43</u> | <u>35</u> | <u>130</u> |
| Total | <u>404</u> | <u>395</u> | <u>387</u> | <u>1186</u> |
| <u>ENDOWMENT REVENUE</u> | | | | |
| Interest on Kuwait Trust Fund | 39 | 39 | 39 | 117 |
| Interest on Arab Trust Fund | <u>6</u> | <u>6</u> | <u>6</u> | <u>18</u> |
| Total | 45 | 45 | 45 | 135 |
| <u>PROJECTED TUITION REVENUE</u> | | | | |
| Seminars | 158 | 158 | 158 | 474 |
| Development Lawyers Course | <u>303</u> | <u>303</u> | <u>303</u> | <u>909</u> |
| Total | <u>461</u> | <u>461</u> | <u>461</u> | <u>1383</u> |
| TOTAL PROJECTED NEED | 995 | 1294 | 1465 | 3754 |
| TOTAL PROJECTED REVENUES | <u>910</u> | <u>901</u> | <u>893</u> | <u>2704</u> |
| SHORTFALL | <u>85</u> | <u>393</u> | <u>572</u> | <u>1050</u> |

In addition to its official budget, an unforeseen but critical hidden cost has been the need to advance per diem and travel to participants, reimbursement of which comes only after significant delay by sponsors. The necessary sums for the present and near future are:

| | (in US\$ Thousands) | | | |
|----------------------|---------------------|-------------|-------------|--------------|
| | <u>1984</u> | <u>1985</u> | <u>1986</u> | <u>Total</u> |
| Participant per diem | 322 | 415 | 498 | 1235 |
| Participant travel | <u>180</u> | <u>259</u> | <u>310</u> | <u>749</u> |
| Total | <u>502</u> | <u>674</u> | <u>808</u> | <u>1984</u> |

IDLI now sees the need to establish a specific operating reserve of \$500,000 to cover the repetitive reimbursement hiatus it sees as inherent to its operations.

D. PROBLEMS

1. Financial

As the above projected revenues and expenses show, IDLI is at present faced with a recurring and increasing budgetary deficit. This is no doubt its most immediate and pressing problem. While IDLI has fulfilled AID's hopes of demonstrating substantial international support, if the word "sufficient" is placed in the equation the affirmative becomes a negative. The simple answer is that IDLI needs more money. IDLI tends to see this in terms of obtaining more grants both for endowment and specific program funding. AID has tried to urge upon the organization a more hard-nosed policy of making the courses, through tuition, support the institution. Both these strategies have their merits and limitations and definitely should not be neglected in devising a solution package. At the same time the institution suffers from certain mechanical/administrative and structural realities that contribute to its difficulties; conversely, if these realities were either directly attacked or compensated for, as appropriate, a major contribution might be made to the Institute's achieving financial stability.

2. Mechanical/Administrative

IDLI's hidden costs in providing advances to participants for travel and per diem, noted above, represent a major mechanical/administrative difficulty in the sense that its funding is linked to the operations of its donors. (If donors are tardy in payment, IDLI lacks funds to pay its bills.) This problem is not exclusively IDLI's but more established institutions usually have other reserves to call on and, at the same time, feel confident enough to set their own procedural demands vis-a-vis their users.

IDLI is properly seeking to redress the first half of this problem by building up an operating reserve. To date, however, it seems reluctant to correct the other half by establishing minimal rules for funding participation. Part of the problem is IDLI's desire not to eliminate some of the neediest candidates, especially those funded by their own financially strapped and administratively inefficient governments. On the other hand, a good deal of the problem is probably tied to the lack of an established curriculum calendar and adequate lead time so that donors and governments can budget in advance and complete their own administrative processes. In some cases the time between notification of a pending course and registration has been a month or less. Anyone who has worked in developing countries knows that a lead time of three to six months at a minimum would be more realistic.

Given the short time frame from inception to operation, it is hard to criticize IDLI's past practices, but responses to immediate imperatives are not necessarily good candidates for permanent policy. It is hard to imagine a training institution staying in business if it attempts to compensate out of its own operating funds for the problems of financially strapped governments or inefficient funding agencies. The advancing of per diem and travel to participants is a policy the institution should carefully rethink. If it should seem that the policy does sincerely make a difference in the ability of candidates to attend, even after more timely notice is given, than some form of continuation might be justified. However, it would probably be more appropriate to look upon these as scholarship loans, obtain special funds to cover them accordingly, and accept the probability of some loss.

3. Structural

Administrative procedures, such as advancing of per diem and tuition to participants, represent policies that can be kept or altered without changing the fundamental nature of the institution. Other aspects of IDLI's organization are so fundamental that their presence or absence is an important determinant of how the Institute can and does behave. These are what I call structural aspects and there are at least four of major importance to evaluating performance to date and possibilities for change.

a. Lack of Endowment

IDLI lacked an initial endowment that would have provided it with a guaranteed annual reserve on which to develop a core program, as well as to tide itself over the hiatus between expenditure of funds and reimbursement from foreign donors that seems to be an unavoidable reality of foreign assistance funding. The Institute is trying to remedy this and has obtained some small endowment contributions (see list of donors, page 9) but faces the formidable obstacle of donor policies that overwhelmingly favor funding specific activities. The result is recurring crises management with inordinate amounts of time and effort spent chasing funds which detracts from critical normal administrative duties. Equally worrisome is the extent to which the Institute may eventually feel compelled to excessively orient its long-term program to meet the bureaucratic program demands of the one or two crucial donors rather than the priority needs of its intended client group.

Having stated the negative aspect of this problem, it is probably worthwhile to note the positive aspects of institutions without permanent endowments in that they are forced to be responsive to immediate demands precisely because of the need to raise cash in the donor marketplace. From this perspective an intermediary solution that would guarantee IDLI core funding for an appreciably long, but neither indefinite nor automatically renewable period of time might actually be preferable to one promising total security.

b. Innovation versus Institutionalization

Institutionalization, as it is generally used, conveys the desire to create a set of arrangements and circumstances that will perpetuate both a specific goal-seeking behavior and the ability to work towards that goal. When we seek to institutionalize a research capacity in an organization, we seek to instill both the capacity to do that research and a generalized understanding of and drive towards the need to perform the involved tasks. Similarly to institutionalize good management practices involves not only assuring the necessary skills but also the appreciation and desire to obtain the management goal. A recurring feeling about IDLI, as already expressed, has been that, while it has stated goals, in fact its lack of adequate resources to obtain them seems to have engendered a highly reactive/opportunistic modus operandi not entirely consistent with established institutional management. For example, though IDLI has begun to create a basic core curriculum with its Development Lawyers, Negotiating International Petroleum Agreements, and International Leasing courses, each time it wishes to give a course IDLI must either identify available faculty or utilize its own administrators.

There is, admittedly, another side of the coin. One senses that IDLI's rapid success to date has depended to a large extent on its acting as a magnet, drawing on a wide range of ideas and aspirations. In this sense its very lack of permanent structure and relatively open agenda are two of its greatest strengths. In discussing IDLI with various people and missions, one is impressed by the extent to which contacts with the Institute has stimulated others to think of neglected areas of law and development in their own immediate environment that deserve attention. This suggests that IDLI's openness and minimal permanent structure are and should not be seen only as results of other circumstances, but also as facets of its nature, and that, in seeking to strengthen IDLI, it would be regrettable to destroy them. Such could well happen if IDLI's program becomes mainly a stock number of repeated training courses.

In the end, what seems to be needed is to preserve a large degree of flexibility while simultaneously instituting management practices that will maximize the Institute's ability to deliver on the creative expectations it engenders. This involves walking an administrative tightrope that requires donor understanding, as well as a fiscal safety net for the occasional fall during the learning process.

c. Clients and Patrons

Clients and patrons, both perceived and real, are a crucial determinant of IDLI's behavior now and in the future. The Institute sees its clients as being the public and private legal administrative cadre in developing

countries. Donors are viewed as means to an end. Consequently, IDLI feels justified in doing everything possible to maximize the accessibility of developing country participants to its programs (e.g., by providing per diem advances).

Within AID there is a spectrum of opinion and some inconsistency as to IDLI's purpose. For example, by funding the original grant AID implicitly accepted IDLI's stated purpose of primarily serving developing country needs. However, what is more characteristic of developing countries than their inability to pay the full costs of self-development? To suggest, as AID has, that IDLI finance itself directly from its services, means not directly serving the least able to pay and the most in need or servicing them only through programs specifically funded by donors. Under such conditions it is the donors who are the real clients. This is most dramatically seen in some of the responses from USAIDs whose interest in IDLI understandably is directly related to how they perceive it helping their particular country programs, rather than their seeing a larger developmental need they should expand their program to include. At present IDLI seems to be trying to straddle this dichotomy. The final outcome largely depends on how much future general funding (endowment and general scholarships) it can obtain as opposed to specifically earmarked grants. The nature of future AID assistance could be a significant determinant in this regard.

Lastly, there is a third potential clientele that has not yet been served. This is the legal/administrative cadre of donor agencies themselves. To date, IDLI's courses, with some exceptions, represent developed country personnel training developing country personnel. However, if one peruses the curriculum of offerings, such as IDLI's Development Lawyers course, one sees a spectrum of subject matter of direct relevance to donor agency personnel which is not part of the normal education of developed country lawyers. In this sense, development law and IDLI represent the creation of a new administrative technology rather than a simple technologic transfer. Ideally, this would call for more extensive mixed participation of developed and developing country personnel on all levels. If this were to occur, it would probably also have a dramatic effect on IDLI's role as a networking mechanism between international legal/administrative personnel.

d. Location

Explanation has already been given as to IDLI's choice of Rome as its central location, especially its argued suitability as a central locale for travel to and from Near East and African countries. In this regards, a somewhat unforeseen development has been the interest already shown by non-Near East and African countries such as China, Ecuador, India and Sri Lanka. There is little doubt that with effort IDLI could stimulate increased worldwide interest and that to a large extent such worldwide involvement is called for

if the Institute is ever going to get deeply involved in such activities as standardization of donor regulations. To what extent can IDLI spread itself throughout the world? Conversely, do and should all roads lead to Rome? The questions are neither one of flight schedules and accommodations nor of resources alone. The questions are concerned also with the extent to which an institution's geographic location inevitably affects its orientation and the human and experiential resources it draws up. (For example, IDLI teaches in English and French but has no existing plans for teaching in Spanish.) Can and should IDLI really seek to be a worldwide organization? Should it retreat, before it spreads itself too thin, into a predominantly Near East/Africa orientation? Are there other possibilities, such as its becoming part of a larger network of organizations with either regional, subject matter or service specializations? To date IDLI seems successfully to have been "playing it by ear" as regards its geographic expansion. Once again the question is whether this is a viable long-term strategy.

V. ASSESSMENT OF PERFORMANCE AND VALUE

A. USAID AND PARTICIPANT REACTIONS

To get some direct input from those who have benefited from IDLI's program to date, the Near East and Africa Bureaus queried all USAIDs by cable (c.f. Annex B). Out of the 96 participant trainees as of August 1984, responses were obtained from 36, or almost 38 percent. Lack of responses seemed to be due either to absence of the participant or lack of USAID interest or ability to follow-up, especially as regards the many non-USAID funded trainees.

The results can only be termed overwhelmingly positive to IDLI. Of the 36 respondents, 33 were totally positive and often enthusiastic while 3 qualified their general positive opinion of the experience with substantial suggestions of how the curriculum, teaching, and lodging might be improved. There was not a single completely negative response.

The following 3 cables (2 positive, 1 mixed) are provided as examples of participant responses.

1. Swaziland

i. Set forth below are the comments received from Mr. Wilfred Fakudze concerning his IDLI experience. Mr. Fakudze is Legal Advisor to the Small Enterprises Development Company in Mbabane, Swaziland. Regret delay in responding to reftels; mission experienced difficulty in locating Mr. Fakudze since cables did not identify his place of employment.

ii. QUOTE:

SUBJECT: International Development Law Institute (IDLI): Evaluation of Services

I am very privileged to get this chance and to write about the relevancy or otherwise of the courses offered by IDLI:

- o IDLI is a unique institution of higher learning in the sense that the training I received there cannot be found in any institution of learning in the whole world that I can think of. The knowledge that we received there is unique in the sense that such knowledge has been acquired by professional individuals who have spent many years in the field acquiring such wealth of knowledge. But the most important aspect of IDLI is that such unique knowledge is distributed throughout the African continent within three months as shared to the tutors whom some of them have spent a decade acquiring such knowledge.
- o IDLI does not only supply participants with theory, but it is the simulation exercises that I found to be most important and relevant. For example, in my country, Swaziland, there is an Hydro Electric Power Station Construction project which is now nearing completion. When this project was initiated no one in the whole country knew about the "rules of the game" concerning project financing - both public and private. My country had to rely on expatriates from the developed countries in Europe to come to our assistance. Even our learned judges and our experienced lawyers have never had a chance of learning about the lawyers' functions in project financing. Ours is to prosecute and try cases and very little is known about the lawyers' functions in procurement or in legislation, let alone the lawyers' functions in the development of our country.
- o In my country, very little is known about the lawyers' role in development, especially the lawyers' participation in the initial stage of a project. Lawyers are said to be spoilers during the negotiation stages of a project and thus find themselves being pushed aside until the negotiation stages are completed. But once there are problems concerning the interpretation of the agencies' procurement guidelines, then lawyers' training and knowledge is sought. This often occurs when it is too late for the lawyer to remedy the situation. IDLI clearly puts across the importance of lawyers or legal advisors' participation in the initial stages of a project. This is very vital because it solves the headaches that our developing countries find themselves being committed to. Lack of proper training to legal advisors of developing countries result in their countries being unable to repay their loans. In short, IDLI is more relevant with its unique and specialized training. In fact, this institution needs more financial support from powerful agencies and in my opinion a yearly budget allocated to this institution is a necessity.

- o The choice of the tutors selected and the topics included in the course outline was exactly what the Third World countries lawyers' needed most. The tutors were on average masters in their respective fields coupled with experience. These tutors were even more relevant to us in the sense that most of them have been to Africa, and they have firsthand information about the needs of Third World countries. In my opinion, therefore, the vast wealth of knowledge I acquired within a period of three months has really helped Small Enterprises Development Company (SEDCO) especially in the field of reviewing, monitoring performance and resolving disputes.

Though last but not least in importance, kindly allow me to extend my appreciation of the hard work of the IDLI staff and to Messrs. Mike Hager and Bill Loris. The above mentioned gentlemen are what I may proudly refer to as the source of inspiration for the success of IDLI. UNQUOTE.

2. Ghana

SUBJECT: International Development Law Institute (IDLI) - NE Regional Project: Evaluation of Services

REF: 84 STATE 246750

i. Mission has been in touch with four Ghanaians who participated in IDLI training programs on different dates in Rome. All four participants expressed positive opinions re usefulness of programs.

ii. Mission regrets delay in response. All four participants mentioned reftel have been assigned to undertake important national assignments; e.g., Mrs. Ruth Nyakotey, Chief Legal Advisor of GOG's Ghana Investment Center, is to present paper on OPIC-ECOWAS Seminar on Trade Investment in West Africa to be held in New York, September 28, 1984; Mr. Akyea Tawiah Yaw, Deputy Manager, National Investment Bank, who participated in the seminar on "Negotiating a Petroleum Exploration and Development Agreement", December 4-17, 1983, in Rome, is presently on secondment with the Technical Committee of the Ministry of Fuel and Power on Petroleum Exploration and Development Promotion Program.

- o Relevancy/Benefits: Participants feel they were provided practical training in the basic skills required for lawyers to be more effective negotiators and constructive participants in the development process. IDLI seminars provided practical training to develop their skills in planning, reviewing and revising of legal documents, drafting, negotiation, advising clients, monitoring performance and resolving disputes. The IDLI seminars were useful and very relevant to the participants' day-to-day duties in their institutions.

- o Ease of Arrangements: The application and selection process and other arrangements for seminars were simple, clear and straightforward for participants. Travel arrangements were by the most convenient and direct routes on basis of prepaid ticket advices. Decent accommodations and other facilities left participants free to concentrate on the course work.
- o Reasonableness of Cost: In view of four participants, IDLI seminars were reasonably priced.
- o Quality Training: The instructors were capable and were able to impart their knowledge and experience in an able manner -- competent and expert in their special areas. The course materials were carefully selected and useful as a source of reference for the professional participants in terms of future use in actual practice.
- o Specialized IDLI Services: It would be interesting and useful to have IDLI organize a workshop lasting about 14 days in one of the developing countries, for lawyers, senior public servants and parastatal executives on the "Role of Lawyers in the Negotiation and Administration of Agreements." This might be a useful step in correcting a perceived lack of proper Third World application of legal skills in the development process.
- o Comments: The IDLI seminars and courses deserve to be encouraged and supported in material and financial terms. Part of this support should continue to be by providing adequate fellowships for participants, particularly those from countries in the Third World with foreign exchange constraints, to ensure their participation opportunities.

3. Cameroon

SUBJECT: International Development Law Institute (IDLI) Regional Project, Evaluation of Services

REF: 84 STATE 246750

i. Of the participants from Cameroon listed in reftel, three have been contacted. The fourth is non-Cameroonian and cannot be located. Of the three participants, one Mr. Paul Tessa, did not attend the course listed against his name. He informed mission that he was only present at a preliminary meeting in Rome from May 22-24, 1983, for the initial planning of the IDLI seminars. However, he believes that the objectives of IDLI are rather important and beneficial to countries which still have the problem of highly qualified manpower.

ii. Mission administered a 13-point questionnaire based on reftel para 3 and received responses from two participants who attended the LCE and NAP courses:

- o Relevancy of Courses Offered: One found the course relevant to his present employment while the other did not at present but believes that since he is in administration he may eventually have use for it.
- o Already Discernible Program or Policy Benefits Obtained: One of the participants has participated in the drawing up of a contract which is to be given a second review. The other has not had the opportunity yet to observe if his view have had any influence.
- o Ease of Arrangements: For one of the participants, the size of the classroom was practical; for the other it was small. One found lodging and boarding comfortable but very expensive; the other was negative. For one participant transport was adequate; for the other not. One of them found social interaction not bad; the other thought it required more initiative to promote better social interaction.
- o Reasonableness of Cost: To one of them the cost of the course was rather expensive; to the other it was reasonable.
- o Quality of Training Received: Both participants ranked the training received as good out of 5 choices ranging from very poor through excellent.

iii. Additional Information Concerning their Expectation and Needs of the Course: For both participants the course met their needs.

iv. Asked if they would attend a similar course again, both replied positively.

v. One suggested that the course could be improved if more professionals and high level faculty were involved. END OF CABLE.

4. USAIDs

Twenty-one responses were also obtained from USAIDs with no direct experience with IDLI. Nine expressed interest in possible future use of IDLI's services. Eight had no interest, feeling either that IDLI's program was not directly relevant to theirs, or had other training institutes they preferred (i.e., Bureau of Census, George Washington University, International Law Center). Four missions sent "no comments."

Certain clear commonalities are prominent in the replies. The courses were successful and highly regarded in direct relation to the degree to which they

provided an immediately needed upgrading of skills for a job that the participants had to do in their home countries. Practicality and immediate applicability from the participants' standpoint were paramount. Second, the teachers and curriculum, with some qualification, were considered good and often excellent. Third, there is a great sense of emotional as well as intellectual appreciation of the IDLI staff for their performance. Overall there is no question that, if the degree of foreign assistance to institutions were democratically determined by the vote of prior users, IDLI would be a winner.

As regards USAIDs' interest, the response is a mixed bag. To the extent field missions voiced their own opinion the general message was, "Everything depends on how it relates to our program." Those USAIDs that saw a benefit for their program were positive, those who saw it as extraneous were uninterested, and a few did not seem to understand its relevancy at all.

B. THE VALUE OF IDLI

The original proposal for the creation of IDLI outlined the supposed needs for such an institute; the loss in time, money and objectives suffered by developing countries when their representatives lack necessary substantive knowledge and negotiating and drafting skills for their responsibilities; the lack of understanding by developing country agencies' personnel of the requirements of bilateral and multilateral assistance agencies; the need to revise and standardize both national laws and international practices in areas of bilateral and multilateral aid; the lack of access to professional resources by developing country lawyers, etc. It is certainly too early to assess IDLI's actual contribution to meeting these needs. However, from the reaction of the participants and others associated with IDLI to date, four real, if limited and hard to measure, results can be identified.

First, several participants expressed the belief that they were able to directly apply knowledge and skills learned during an IDLI course to major negotiating tasks. While the precise details are lacking, anyone experienced in major financial or project negotiations knows that it is not an exaggeration to say that millions of dollars can be gained or lost through attention or lack of attention to the smallest of details. In several cases it appears IDLI has already paid off in this way for several countries.

Second, though dollar value is not as easily attributed to areas of development legislation, outside of immediate business transactions, yet the message also seems clear that many participants felt their competency to work in such areas was significantly upgraded by IDLI training.

Third, though the value of innovative thinking is even harder to measure, again there is no question that IDLI through its existence, and especially through the energetic outreach out of its founders, has increased the

awareness of several USAIDs as to areas where assistance for strengthening legal capacities of developing country personnel is directly germane to important development issues with which they deal.

Lastly, and perhaps most interesting if somewhat ethereal, is the sense of shared enthusiasm and esprit de corps bordering on elan that emanates from both IDLI's staff, many participants, and associated professionals when they speak of it. The Anglo-American/Western European concept of law and lawyers has long been associated with the idea of adversarial proceedings. This may be appropriate to commercial and political dealings where situations can be seen as "you win, I lost" (though, in fact, many non-Western cultures do not see such transactions this way). In development assistance, however, where supposedly the concerned parties share the common desire to develop the country, the confrontational style and procedures are highly detrimental. The type of shared investigatory-learning experience that IDLI seems to offer both its trainees and trainers could be a valuable mechanism to overcome the differences in perspective and understanding that often dominate development negotiations. It could help replace them with a greater sense of common purpose supported by a greater shared competence to achieve the tasks at hand.

VI. OUTSTANDING QUESTIONS

A. PROGRAM MIX

To date IDLI's efforts have concentrated on its training courses that have varied from those focused on a fairly specific task, such as International Equipment Leasing, to those focused on a broad field of activity, such as Development Law. What seems to have been a hallmark of the success of all, however, appears to be the IDLI training package, which deals not only with law and regulations but with a range of skills needed to perform in the chosen arena, such as drafting, analyzing, and negotiating. In this sense IDLI's approach has been broader and more eclectic than any traditional legal education. At the same time, IDLI's program remains basically a legal program run by the legal profession. This is certainly not inappropriate for a fundamentally legal institution. The potential problem is that IDLI's expressed aspirations have a wider focus. IDLI, especially in the area of providing consulting and specialized services, is looking for involvement in larger legal problems that impinge not only on questions of law and require legal skills but also competence in economics, social science, public administration, resources management, and so forth.

An example of the above was the possibility that the Institute and USAID/Tunisia were investigating vis-a-vis a training program in Tunisia oriented to problems of reconverting public agricultural land holdings to

private holdings. While this particular opportunity did not materialize, no doubt others will in the future for the simple reason that lawyers are practitioners with an immediately applicable skill who can produce results on both the social and individual levels in many of the policy areas crucial to development. The question is what kind of results? The colonial and post-colonial history of developing countries is replete with examples of good laws drafted by good lawyers either in inappropriate situations or with unforeseen negative consequences.

What might be called "comparative applied jurisprudence" is not even a recognized field, let alone an area of expertise of lawyers (or of any other professional group per se). As a result an organization such as IDLI seems faced with several choices:

- o make a special effort to evolve an institutional capacity in such an ancillary area;
- o establish a network of collaborating organizations and individuals who together could assemble the necessary disciplinary experience for such tasks;
- o use traditional legal skills with a high risk of failure; or
- o concentrate exclusively on the training and application of legal skills per se and resist the temptation to get involved in substantive areas of public policy.

While any decision on these questions is primarily IDLI's, donor financing could obviously be an important determinant.

3. RELATION TO INDIVIDUAL DONORS

The question whether the developing countries or the donors are IDLI's real clients, has already been mentioned, as have some of the consequences of the answers. There remains a somewhat more sensitive question as to the nature of IDLI's relation with certain specific donors per se.

IDLI's ties to AID, OPEC, the Government of Italy, the Kuwait Fund and The World Bank are based not only on the donor-donee relationship but also on the presence on its original Board of Directors of important members (or, in the case of OPEC, past officials) of these organizations. From one aspect, the assembling of influential but experienced development specialists who also have important donor connections was part of the Institute's implementation strategy. At the same time, it should be clearly understood that with the exception of Ministro Sergio Balanzino, who is the host government representative, all of the Board members are members in their own stead and not official representatives of any organizations. Yet, no matter how the

situation is characterized, a logical presumption arises that such mixing of roles will at least appear, and may actually result, in the establishment of some sort of special relationship between IDLI and these organizations or governments.

Since the Board was not established at the time of the original AID grant, no such question of conflict of interest arose. However, when it became necessary for IDLI to request additional funds, the desire to avoid just such an appearance of a conflict of interest motivated the resignation of Mrs. W. Antoinette Ford, AID Assistant Administrator for the Near East. During and since that time, Mrs. Ford has delegated decision-making on IDLI to others, and has made a point of staying removed from influencing actions on the organization other than providing information and opinion as requested.

Unfortunately, the above circumstances are an excellent demonstration of the complexity of problems that public officials often have when forced to behave according to appearances rather than reality. While IDLI does have on its Board members of donor organizations, in fact it has a much more dispersed donor base than many PVOs and NGOs, who depend on AID or another donor for the large portions of their financing. The fact that these do not have donor members on their board may reduce the appearance of special influence, but it may also reduce the constructive influence a donor member of the board could have on the organization's program. Moreover, IDLI as an organization is somewhat unique, since while most PVOs or NGOs have a programmatic purpose independent of donor existence per se, a major raison d'etre for IDLI's existence is to affect the basic donor-donee relation by training developing country lawyers in donor procedures and standardizing donor regulations. Even such actions as training developing country lawyers in analytical and negotiating skills can have a direct effect on the basic working relations between donor and host government representatives. In this regard, donors can be said to have a direct organizational interest in IDLI's purpose and performance, and concomitantly IDLI has an interest to assure that each major donor also has sufficient but not excessive input.

Three options would seem to exist:

- o IDLI can attempt to evolve a neutral board of substantive experts and geographic representatives with no members who are also active representatives of funding organizations. This would certainly reduce the appearance of conflict of interest but might also affect the board's fundamental ability to assist the Institute to achieve adequate growth and stability;
- o IDLI could attempt to achieve balanced representation of donors and concerned countries. It appears to have done this somewhat as regards its original board. For continuation some formal board and donor agreement on the issue might be required which, in the case of AID, at least, would be problematic;

- o IDLI can follow a mixed strategy by opening up the opportunity for membership and potentially greater influence on its board to those major donating organizations or countries who so wish to participate. This approach is probably the easiest and most pragmatic. It could lead also to risks of undue influence which, though out of good intentions, might be counterproductive to IDLI's growth as an independent entity. As regards all of these options, AID cannot decide for IDLI, but AID should think clearly about its own decision.

VII. MAJOR AID POLICY ISSUES

A. RELATION OF THE DEVELOPMENT OF LEGAL SYSTEMS AND SKILLS TO AID'S MANDATE AND PROGRAMS

The preceding has been an attempt to outline some fundamental policy decisions whose clarification by IDLI would help donors in determining the direction and extent of their assistance to the Institute. As far as AID is concerned, as noted, there exists a need for AID to clarify its own policy and understanding on the role of legal systems and legal personnel in the development process in general, and in AID's own defined area of actions in particular. At present AID seems to have provided support to legal oriented activities and institutions in five small and occasional ways.

- o Support for general research activities to increase basic knowledge about how law and development relate in some specific geographic area (e.g., the Near East Bureau's grant several years ago to the Social Science Research Council's Law and Development project to increase understanding of legal processes in the Near East);
- o Support to specific legal activities (law conferences, libraries, organizational capacity building) in the Congressionally mandated area of human rights;
- o Specific training and assistance for host country legal divisions and personnel when such support is a necessary element in another program or project (e.g., codification of regulations in a particular production area, such as fishing, livestock grazing or farming);
- o Sporadic field mission funding of special training opportunities outside of normal program strategy;
- o Support of research into a specific program topic. This last type of assistance has taken two forms: very limited research on a specific question, such as the legal implications of new biotechnologies in

agriculture, and long-term interdisciplinary research in an area of pertinence, as exemplified by AID's long continuing support of the University of Wisconsin's Land Tenure Center.

What all of the above have in common is a general conception of law as a field of study, technical skill, or process that on specific occasions impinges on or can contribute to project implementation or program direction. It is, therefore, to be dealt with or called upon when its relevance become apparent. With the possible exception of human rights funded activities, which are really an extra-developmental area, AID has not traditionally seen law in the same way as, for example, public administration or management -- namely as a field of skills that is an integral part of successful development implementation and institutionalization and, therefore, deserving of attention both for itself (i.e., establishing schools and training programs for management) and as a component of other projects (i.e., in agriculture and health).

In fact, the initial funding of IDLI by AID represented the beginning of a new perspective of law in harmony with the broader, more generic view of law and development. If AID decides to continue support of IDLI activities, the way it provides its assistance could have a significant effect on whether the Institute itself expands in response to this grander concept or retracts into a more traditional role. Broad support to the Institute's operations or development of special programs would seem conducive to a continuation of support for the expanded view of law and development. In contrast, if assistance is channeled largely through missions who send candidates to courses when they seem germane to a specific USAID program, support will tend to reinforce the more constricted, traditional concept of the lawyer's role.

B. USE OF LAW AND LAWYERS WITHIN AID

If the funding of IDLI represented a modest AID excursion into a new concept of law and development, it also represented a daring and innovative, if limited, experiment in the use of AID lawyers themselves in the development process. The traditional view of, and even by, lawyers in AID seems to be the simplistic dictum that lawyers as lawyers exist to deal with legal matters -- for example, to make sure AID actions conform to law; to draft and interpret legal instruments; and to provide legal counsel if contestation arises. Lawyers are not usually viewed as being potential project backstop officers, design team members, or field project implementers. Ironically, the legal career track has proven an effective avenue for a substantial number of lawyers to move to top positions -- assistant and full mission directors -- thus representing a jump from an ancillary to a top leadership position without any opportunity for interim experience in intermediate substantive general development roles. IDLI, since it was founded and is led largely by two AID lawyers (on leave without pay) represents a dramatic departure from

the AID norm. Moreover, it has benefited from the services of several other AID lawyers as short-term (one or two weeks) visiting faculty for its courses, and from the guidance it received from the Assistant Administrator for the Near East when she was a board member.

From informal discussions and observations, there would seem to be two opposing views on the value of such an expanded role for AID direct-hire personnel in general and for AID lawyers in particular. One is that AID direct-hire personnel are not implementers and should stick to their specific functional, managerial, analytical, or administrative roles. The other view is that one of AID's greatest inefficiencies and tragedies is the degree to which it "contracts out its brains" and prevents the vast accumulated experience of its employees from contributing directly to successful implementation tasks. The claim is that through the denial of such opportunities, AID restricts and sometimes actually reduces through atrophy the skills of its employees. Among many nonlegal personnel, perhaps much more than among the lawyers themselves, there appears the desire that lawyers would take a much more creative -- operative -- and supportive role in project implementation rather than the exclusively narrow watchdog function they are now seen as performing.

A major decision for AID is whether for itself as well as for development per se the time is ripe for such a new approach.

VIII. SYNOPSIS OF IDLI NEEDS

The preceding discussion has attempted to provide a basic review of IDLI's situation, and to surface those areas most demanding consideration, decision and action within the not too distant future. These may be summarized as follows:

A. NEED FOR ASSURED INTERMEDIATE (FIVE YEARS) AND LONG-TERM (TEN YEARS) OPERATING SUPPORT

IDLI is still not in a position to be treated as a permanent fixture on the development scene. However, it will stand little chance of ever achieving this without enough assured support for the next five to ten years to allow it to proceed from crises management to progressive institutionalization of its program and capacities.

B. NEED FOR A CLEAR INTERMEDIATE (FIVE-YEAR) STRATEGY AND PRECISE GOALS

IDLI's general purpose probably suffices as a long-term goal. Similarly, its immediate 1985-86 objectives, which are basically to firm up its present

training courses and begin some excursions into other activities, such as in-country workshops and consultancies, also probably suffices for its purposes. What is lacking is a sufficiently precise intermediate (five-year) operational plan that clearly lays out its human and financial needs and in response to which various donors can specifically target their contributions.

C. CLARIFICATION OF RELATION TO SPECIFIC PRIMARY DONORS AND OTHER SPECIAL PARTIES

As discussed, certain donors (i.e., AID, Government of Italy, Kuwait Fund) have played prominent roles in IDLI's creation. IDLI, together with them, must define the nature of their future role and, if special, the corresponding responsibilities of each. Concomitant with this should be a review of other considerations, such as adequate representation of different geographic, cultural and legal perspectives to see if they call for establishing complementary special non-donor participants.

D. NEED FOR DETERMINATION OF GEOGRAPHIC FOCUS

The question of whether IDLI will try within the near future to be a regional or worldwide organization would seem crucial to the establishment of a realistic intermediate operation plan. The present "take it as it comes" strategy at some point will almost inevitably result in extreme dispersal of otherwise needed and concentrated effort.

E. NEED FOR REINFORCEMENT OF STAFF AND EXPERTISE BOTH INTERNALLY AND THROUGH EXPANDED COLLABORATION WITH OTHER ORGANIZATIONS

Regardless of the directions in which IDLI decides to expand, some expansion seems necessary and inevitable to justify its permanent institutionalization. Given the experience to date, which indicates mounting demand, and coupled with an inevitably limited resource base, IDLI would seem well advised to develop alternate strategies to expansion of its own staff and responsibilities to meet all its needs. The most obvious alternative would seem to be greater collaboration and pooling of resources with a gamut of other relevant organizations. In fact, the development of such a collaborative network of law and development organization by IDLI would itself be a major contribution. To begin this process requires identification of foreseeable activities, delineation of needed resources, realistic determination of the manageable limits of IDLI's area of expertise and primary involvement, and creation of a supporting network to assume the remaining responsibilities.

IX. SUGGESTIONS FOR ALTERNATIVE RESPONSES FOR
AID CONSIDERATION: PROS AND CONS

A. NO FURTHER ASSISTANCE

Several facts argue for consideration of new assistance to the Institute: IDLI has basically met its first-year goals, further assistance is needed if the Institute is to have a reasonable chance of permanent success and AID provided the seed money to start IDLI. Against this, of course, as against all potential projects, must be weighed the totality of competing demands, which is outside the scope of this evaluation. However, when that is done two fundamental questions and two fundamental risks must be considered. The fundamental questions are: how important does AID perceive the field of development law to be, and how important is it in terms of AID's program priorities (e.g., policy reform, private sector development, technological transfer and institutional development). The two fundamental risks are that the Institute may not survive, short of very substantial AID support or a multidonor plan for long-term support, and if it does survive IDLI's final configuration may not live up to either its full potential or AID's expectations, unless AID makes significant programmatic as well as financial contributions.

B. AID REPRESENTATION ON THE BOARD

The bureaucratic realities of AID that prompted the resignation of Mrs. Antoinette Ford from the Board are not likely to disappear. AID must remain sensitive to the need to avoid appearances of a special relation with IDLI, in terms of preferential funding consideration. At the same time it must recognize that IDLI may be carving out a unique role in reforming and redefining legal practices, not only in developing countries but also between them and donors. Under such circumstances, if AID abrogates its position to affect direction of the Institute at this crucial time in its development, it will have poor grounds to complain if differing perspectives from its own become dominant. One possibility for consideration might be an appropriate AID representative from a nonfunding or authorizing office, such as the Office of General Counsel, to become a board member, if IDLI so desires or if representation of major donors on IDLI's Board becomes an established practice.

C. PARTICIPATION OF AID PERSONNEL: LWOP,
DETAILING, TDYs, PARTICIPANT TRAINEES

The question of the importance of the participation of a representative on IDLI's Board is less critical than the nature of future AID personnel participating as operational staff. At present, its Director, L. Michael Hager, and Program Legal Counsel, William T. Loris, do not in any way function

as AID representatives, but are on leave without pay (LWOP) status. Their original one-year leaves were extended for a second year without any determination as to the viability of further extensions. Hager and Loris, as original founders with Gilles Blanchi, are in a unique position. It would appear regrettable if one, and disastrous if both, had to remove themselves before the Institute's program and operations achieve a more permanent footing.

At the same time, it is impractical for AID to establish a policy of indefinitely prolonging such leaves for AID employees, and some concern over setting an unwanted precedent undoubtedly is justified. There is an old legal adage that "hard cases make bad law." On the other hand, hard cases exist and must be decided, and justice and wisdom consist of the appropriate application of rules and experience to the particular case in point, whether easy or hard. AID itself supposedly exists to assist development; consequently, its administrative mechanisms should be judged appropriate or not in relation to how they affect the accomplishment of th's task. If extended leaves without pay prove an effective mechanism for development, why not use them?

The more pertinent question would seem to be whether or not AID should encourage continued participation of other AID personnel, in addition to acceding to the immediate need for Hager and Loris to continue. The offer to IDLI to rotate an AID attorney as director or as one of the program legal counsels could be a valuable supplement -- and a possible alternative to AID representation on IDLI's Board of Directors.

Again it should be understood that the question is not a concern for obtaining influence per se, but rather of assuring the necessary input and participation of major donors in an Institute that seeks in many ways to affect the basic operating relations between them and the developing countries. As such, any final decision should be a determination of both the major donors and IDLI's board. A related decision to be made would be whether such an AID contribution could or should be only the availability of the person or also costs (i.e., with the donor organization continuing to pay salary and other employment benefits). There are probably a fair number of candidates for major positions in an Institute such as IDLI. In light of the Institute's need for long-term financial stability, as well as its need to select out of a pool of competing individuals, nationalities and donor organizations, hard core practicality would argue the appropriateness of considering financial support as well as individual ability in the choice of candidates.

The question of the recurrent participation of AID lawyers as visiting faculty is a reduction of the above situation to another operational level. Such personnel are uniquely qualified to teach AID regulations from a pragmatic perspective to developing country personnel. As teaching is itself among the best ways to learn, the modest investment in travel and per diem involved might well be justified simply from the perspective of maintaining the technical expertise of AID's own legal personnel.

In terms of its own personnel, AID would do well to consider also the funding of courses of direct relevance to its own staff and to which it might send AID personnel as participants. In the last few years AID has increasingly recognized the need for periodic short-term training for many of its professional personnel (e.g., Development Studies Program, Agricultural Marketing and Rural Development Workshop, and Management Techniques). In the private sector Continuing Legal Education has become standard practice. It seems difficult to understand why AID legal staff should not be seen as having the same needs and meriting the same offers to meet them as are extended to other AID professionals and private and corporate practitioners.

D. AID OPPORTUNISTIC SUPPORT

Providing grants in support of participant trainees to IDLI courses would be the easiest means of financially supporting the Institute, while influencing, through choice of which courses to support, the Institute's direction. Such support would certainly assist needy candidates and thereby presumably the developing countries. It would also be a popular add-on to field mission programs. However, unless the funding were substantial and assured, which means a centrally funded training project, it would make little contribution to increasing the Institute's capacity for developing a long-term program based on assured resources. At this stage of IDLI's life it would mean leaving the question of the Institute's survival to the marketplace. While this may well be an ultimate goal, it is doubtful if IDLI is ready yet for that challenge.

In any case, opportunistic support will probably come in the form of USAIDs funding occasional candidates. Possibly the best thing IDLI and AID/W could do in this regard is to make it easier for USAIDs to do so. IDLI could assist by establishing and publicizing its programs well in advance. AID could help by not requiring a special waiver each time a USAID wishes to send a candidate in keeping with Handbook 10.

E. AID LONG-TERM GRANT OR PROJECT SUPPORT

Long-term support is, in the end, the only type that would allow AID to contribute with any assurance to IDLI's successful institutionalization. One very limited option to do so has already been mentioned -- namely, the possibility of making a commitment to IDLI to detail an AID lawyer in one long-term position (i.e., director or program legal counsel) and others as occasional visiting faculty. However helpful and advisable, detailing AID personnel will not respond to IDLI's greater needs, either financial or strategic, any more than will opportunistic support through occasional scholarships.

If AID agrees that the field of law and development warrants greater attention and that IDLI represents a major opportunity for assistance in this regard, then relatively substantial assistance is called for, possibly in the form of a Cooperative Agreement. This mechanism permits the direction and area of financial activities to be mutually agreed upon; the responsibility for deciding on precise use rests with the institution and its best judgment in furtherance of the program purpose. Prior to designing such a project (which is quite a task!), it would be necessary for AID to determine initially the proper organizational location of such a program within AID. (This would correspond partially to an IDLI decision as to its primary geographic focus.) In this regard, three options seem plausible:

1. Mission Projects

IDLI could be encouraged to evolve with one or a few USAIDs specific projects focusing on selective elements of pertinent problems, such as legislative, regulatory or administrative practices, or cadre training. One advantage of such an approach is the increased effect of a concentrated effort. Certainly numerous possibilities exist. At the same time, at least two major disadvantages accompany such a strategy. First, it often literally takes years to get USAID funded activities going. Second, given IDLI's limited resources, really concentrated activities in a few countries is probably incompatible with its regional and worldwide aspirations.

2. Regional Projects

At present IDLI is managed by AID's Near East Bureau and funded by both the Near East and Africa Bureaus. This arrangement has not proven particularly dynamic. While 75 percent of the participant trainees come from Africa, the Africa Bureau has basically left the project in Near East Bureau hands, not only administratively but as regards its relation to particular USAIDs, including those in Africa. Africa Bureau continues to be helpful when requested. This situation is reflective of the realities of AID organizational structure and would be similar regardless of which bureaus were involved. Such an arrangement is not intolerable and could continue. However, IDLI's worldwide ambitions remain, and if AID decided the problem of law and development was important enough to justify a worldwide initiative, the regional project modality would probably not generate the necessary degree of inter-bureau cooperation and concentrated effort required.

3. Worldwide Projects

AID does have numerous worldwide projects. The general modality for this is a central technically oriented project managed by its Science and Technology Bureau (S&T), to which individual field missions can add funds for additional

specific activities in their countries. There appears to be no inherent reason why a Central Law and Development project could not be so developed and managed. The major constraint to this modality is probably IDLI's limited capacity at this time to respond to the constellation of activities that would be identified as necessary elements of such an initiative. This, however, is not that unusual a situation. It can be dealt with by creating a project involving a consortium or some less formal coordinated effort of several institutions and organizations. Such an approach might have the additional benefit of contributing to the identified need for the establishment of a worldwide law and development network.

X. SPECIAL ISSUE

The purpose of this evaluation, as of any project evaluation, has been primarily to assess that project in light of what was expected, what was accomplished, and what remains to be done. AID does, however, conduct special evaluations of more encompassing programs (Near East Wheat Production projects), or activities (AID experience in irrigated agriculture), or even specific projects that seem to represent especially important development lessons. Regardless of AID's specific determination of the extent and nature of any future assistance to IDLI, it is hoped the other development lessons the IDLI experience highlights will not be lost. As noted, IDLI represents a most unusual example of initiative, dedication, and even professional and personal courage on the part of a select number of individuals and organizations, among which several AID employees and AID itself are very prominent. Such examples are not so common that they can be forgotten without cost. In fact, it might be argued that they deserve a special evaluation category in themselves, so that in the future they might become, if not commonplace, at least not so rare as they seem.