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**SUPPORTING COMMERCIAL LAW
DEVELOPMENT IN CENTRAL AND
EASTERN EUROPE: PAST LESSONS
AND FUTURE GUIDELINES**

Final Report

U.S. Agency for International Development

**Prepared for: Bureau for Europe and the Newly Independent
States (of the former Soviet Union), Office of
Economic Restructuring**

Prepared by: Coopers & Lybrand, L.L.P.

**Sponsored by: Private Enterprise Development
Support Project III
Contract No. PCE-0026-Q-00-3031-00
Delivery Order No. 3
Prime Contractor: Coopers & Lybrand, L.L.P.**

October 31, 1994

**Coopers
& Lybrand**

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**Prepared by: Flora Painter, Team Leader, Coopers & Lybrand/Washington
Marcie Lombardi, Coopers & Lybrand/Budapest
Jeswald Salacuse, Consultant to Coopers & Lybrand
Philip Wellons, Consultant to Coopers & Lybrand**

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**Supporting Commercial Law Development
In Central and Eastern Europe:
Past Lessons and Future**

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EXECUTIVE SUMMARY

I. Introduction

The economies of Central and Eastern Europe and the Baltic countries (hereinafter referred to as Eastern Europe or CEE) are undergoing fundamental transformation from planned economies in which public enterprises were prime economic actors to market economies with vibrant private sectors. Existence of an appropriate commercial legal framework is essential to complete this transformation because it is critical to the growth of private initiatives and the development of market-driven economies.

This assessment of commercial law reform activities supported by USAID was undertaken by the Agency to gain an improved understanding of the effectiveness of different modes of assistance in development of commercial law in the CEE region. The study involved two components: (1) a review and assessment of the effectiveness and impact of past project activities to identify what has or has not worked; and (2) a forward-looking component applying the lessons learned in order to propose options for assisting commercial law reform in the CEE and NIS.

The assessment reviewed the activities of the Commercial Law Component of the Competition Policy, Laws and Regulations Project (No. 180-0026) in three CEE countries -- Bulgaria, Poland and Lithuania. In Lithuania and Bulgaria, field work was based in the capital cities of Vilnius and Sofia, respectively. In Poland, the team reviewed activities in Krakow and Warsaw. In addition, members of the study team held extensive interviews with staff of the three implementing organizations: the American Bar Association's Central and East European Law Initiative (CEELI); the Commercial Law Development Program of the U.S. Department of Commerce (CLDP); and the International Development Law Institute (IDLI).

II. Effectiveness of Commercial Law Assistance

A. Lessons on the Effectiveness of Training Activities

Assistance under the Commercial Law Component included both short-term (less than 3 months) and long-term (3 months or more) training activities to support the transfer of skills or knowledge in a particular substantive area of law or transaction activity. Three principal modes of training were used: (1) workshops; (2) law faculty internships; and (3) law firm internships. Workshops were offered in-country, in the region, in Rome, and in the United States. The internships were all held in the United States. The assessment found that the effectiveness of the various training activities was influenced by the extent to which:

- a tested training methodology and skilled instructors were utilized;
- training activities took into account the local context;
- training activities drew comparisons with other European legal systems;
- needs assessment and follow-up were undertaken;
- training activity formed part of a broader plan; and

- the appropriate audience had been targeted.

The report reviews each mode of training provided under the project in light of these factors, identifies particular strengths and weaknesses of each type, and suggests key areas in need of attention in the future.

B. Lessons on the Effectiveness of Technical Assistance

Assistance under the Commercial Law Component included a variety of modes of technical assistance: (1) long-term, foreign resident advisors; (2) medium and short-term foreign advisors in country; (3) short-term, out-of-country specialists; and (4) institution-building "advocacy" grants and technical assistance to non-governmental organizations. Principal factors influencing the effectiveness of the different types of technical assistance include:

- relevance of the background and qualifications of the advisor;
- the extent to which the purpose, objectives, and parameters of the assistance had been clearly defined and understood by both providers and recipients of assistance;
- adequacy of the advance preparation of advisors and the recipients;
- whether an adviser was paid or not;
- duration of the assistance;
- the advisor's proficiency in the local language;
- the extent to which technical assistance was well coordinated with other activities and donors;
- the extent to which technical assistance included participation by local counterparts;
- type and extent of resources available to the advisor to support reform activities;
- the type of assistance approach;
- the type of law as well as the stage of development of the law;
- the extent to which technical assistance was adapted to the local context and to regional legal traditions; and
- the extent to which local governments and the local environment were receptive to the assistance.

C. Impact of Assistance Activities

Commercial law projects can have impact at various levels. Individuals, institutions, and economic and social systems may all be affected by project activities, and the extent to which impact can be measured clearly varies. Some indicators of impact, such as an increase in the availability and use of commercial law textbooks, may be easily measured through the use of simple, information management and tracking systems. Others, such as assessment of the development of problem solving ability and negotiation skills of a training participant, may be assessed through interviews but are more subjective. Still others, for example, the impact that reform of a commercial law had on a country's level of investment, are virtually impossible to attribute to a particular project

because too many variables may have come into play. Finally, the measurement of impact, if applied properly, must take into account the time horizon of the assistance activity. The longer the time horizon, the more likely one can assess the full impact of the activity.

Because the Commercial Law Component has been operational for less than three years, it is much too early to assess fully the impact of assistance activities. Moreover, performance indicators were not established at the start of the project and the objectives of some modes of assistance were not clearly defined. Therefore, the team could not assess the performance of the various assistance modes against established benchmarks, but worked with USAID in an effort to develop performance measures that are relevant to commercial law activities and might be applied to future USAID-supported activities. The extent to which the team could assess impact also varied depending on the nature of the activity and the quality of record-keeping and performance tracking by the three implementing organizations. Still, the assessment uncovered several indicators which demonstrate that the various modes of training and technical assistance have had a positive developmental impact overall, despite the short life of the project. The following includes a sample of the impact identified and discussed in the report.

- Skills-based training workshops have increased the capacity of local professionals to understand, analyze and perform commercial law transactions.
- Participation of women in training activities has been quite extensive and has led to increased involvement by women in commercial law reform activities.
- Workshops and law faculty internships have increased networking among local lawyers and the potential for consensus building among the legal community.
- Law faculty internships have improved commercial legal education as law school curriculum have been revised, new commercial law courses are being taught, and different teaching approaches have been used.
- Short-term technical assistance and advocacy grants have helped indigenous legal organizations become more sustainable and have strengthened the capacity of these organizations to promote commercial law reform.
- Technical comments on draft legislation have been adopted and have led to improved drafts of commercial laws.
- Technical legal assistance workshops and law commentaries have contributed to increased and more informed discussions of draft legislation.
- Resident advisors have accomplished role transfer as local individuals are more involved in law reform and have assumed increasing responsibilities in addressing commercial legal issues.

III. Conclusions and Implications for Future Assistance

A. Summary Conclusions

The final chapter of the report discusses the implications for USAID of future assistance to commercial law development in the CEE region. The recommendations for consideration by USAID in the design of future assistance draw both from the lessons gained during the assessment of the Commercial Law Component and from the extensive experience of prominent members of the team in law and economic development in the CEE and other regions of the world. The chapter discusses issues that should be considered by USAID in assisting

commercial law development and presents models and similar guidance for use in selecting and structuring technical assistance and training.

The assessment of the progress achieved by USAID to date suggests that the effectiveness of future interventions by USAID in support of commercial law reform in the CEE region will be enhanced to the extent assistance providers consider the following:

- develop a focused and coherent strategy;
- shift in emphasis of assistance from law drafting to law implementation and enforcement;
- emphasize donor coordination;
- lengthen the time horizon of assistance activities; and
- weigh both the technical and political nature of law development.

B. Commercial Law Assistance Models

The nature and mix of assistance will depend on a host of factors including the nature of the reform to be effected, the level of legal development in the country, the beneficiaries to be targeted, and the resources available, to name just a few. In short, no single formula or "model" for assistance in support of legal development exists. Each mode of intervention must be carefully tailored to suit the particular needs and goals of commercial law reform in a specific country.

The report sets out the principal options or "models" for assistance and suggests the situation in which they are likely to be most effective. We talk about "models" in the sense that we identify elements of proved effectiveness and flag elements to avoid. For training, the report considers five training vehicles -- conferences, seminars and workshops, specialized training courses, academic study, internships, and study trips -- and how and when they might be used to advance commercial law development. We argue that any attempt at commercial law reform in the CEE must entail significant training, whether assistance focuses on lawmaking, law implementation, or law enforcement. In addition, at the outset, it is essential that aid providers identify the key objectives and formulate a long-range, integrated plan for training. Our "models" consider three possible training goals - improving awareness, knowledge, and skills, and how factors such as the legal environment, location, duration, and pedagogical method might influence the results of training assistance.

For technical assistance, we consider six models - resident advisors, short-term advisors, advisory papers by specialists who do not visit the country, local counterparts, legal assistance workshops, and support for local organizations, and also four different commercial law assistance goals. The goals are: (1) to develop rules; (2) to develop skills; (3) to develop systems; and (4) to develop institutions. The mix of goals and phases of assistance (lawmaking, law implementation, and law enforcement) are considered and discussed. Finally, we argue that the purpose of technical assistance over the next few years will shift in emphasis. Generalists who act as advisors will yield to specialists as the region's law development needs become more sophisticated and donors' strategies more focused. The past emphasis on legislative drafting will shift to implementation and enforcement as the initial rush to draft basic laws declines. The assessment findings suggest that legal advisors have a comparative strength in implementation related activities, but are less well-suited to assist in drafting laws in the CEE environment.

The final chapter of the report presents a framework for evaluating the impact of assistance to support commercial law development. The framework illustrates for each phase of law development, different assistance vehicles might be used to meet different objectives.

CHAPTER I: BACKGROUND

I. The Situation in Eastern Europe

A. The Economic Transformation

The economies of Central and Eastern Europe, including the Baltic countries ("Eastern Europe" or "CEE") are undergoing fundamental transformation from planned economies in which public enterprises were prime economic actors to market economies with vibrant private sectors. These same economies, which range from the completely closed (e.g. Albania) to the moderately accessible (e.g. Poland), now seek integration with the international marketplace, and most desire membership in the European Union. Although fundamental economic policy prior to 1989 was strongly influenced by the former Soviet Union, CEE countries are now independent policy makers, setting their own domestic agendas and creating their own economic alliances.

The development of market-based systems requires:

- That significant economic resources and decision making power shift from the public to the private sector;
- Economic decisions based on market principles rather than arbitrary governmental decisions;
- The development of skills and institutions to support modern commercial transactions; and
- Adequate financial markets to provide capital required by the commercial sector.

The existence of appropriate laws, legal institutions, and legal personnel is essential to bring about these changes. Yet, in varying degrees, the current legal regimes in Eastern Europe inhibit all four of these requirements. The concept of private property and private decision making is weak. Freedom of contract has historically been limited. Most legislation does not consider market based economic principles or does so relying only on early twentieth century traditions. With few exceptions, the business and technical skills of legal professionals who must execute modern commercial transactions are desperately inadequate. Financial sectors are underdeveloped and lack adequate regulation, thereby limiting the availability of capital to finance the growth of private enterprises. Improvements in commercial law are therefore critical to the transformation of Eastern Europe into a region of market economies.

B. The Role of Commercial Law Reform

Commercial law reform is not an end in itself. Rather, it is a tool to support the growth of market economies and promote development of the region. In this context, law reform entails much more than changing and modifying legislation. It encompasses the broad revision and rationalization of existing laws, the creation of new laws, the improvement of access to legal materials and information, the development of institutional and individual capacity to apply laws, and the development of institutions to support legal development. The new legal order must embody totally new norms appropriate to a market-based system. For example:

- In command economies, the basic norm is that no economic activity is permitted unless specifically authorized, whereas, in most market economies, the convention is that all economic activity is permitted unless specifically prohibited;
- In command economies, the courts play a minor role in enforcing commercial transactions, whereas, in most market economies, the courts are the fundamental enforcement authority for economic transactions;
- In command economies, public and administrative law provide the basic rules of economic interactions, whereas, in market economies private and commercial law have a much heightened role; and
- In command economies, economic actions are for the most part determined by governmental regulation and decree, whereas, in a vibrant market economy, economic actions are determined through negotiation and contract.

In addition to transforming the legal infrastructure from one based on a command economy to one that will support a market driven economy, law reform should:

- Strengthen public confidence in commercial contracts; and
- Create a legal framework that: (i) supports the selection of financially viable enterprises and the termination of non-viable enterprises, (ii) promotes growth of a viable financial sector, (iii) facilitates the making and the execution of commercial transactions by private parties, and (iv) encourages entrepreneurship and long-term investment.

There is no single or universally best approach to law reform. This report assesses the effectiveness of various modes of assistance applied to date toward achieving commercial law reform in Eastern Europe.

II. History of the Commercial Law Project

A. The USAID Mandate

Assistance for the development of commercial laws to support the emergence of market-based economies in Eastern Europe is an important objective of the U.S. Agency for International Development (USAID). At the start of the transition in Eastern Europe, USAID recognized that the region's legal systems were largely inadequate to support either the development of democratic institutions or the transformation to market-based economies. Having determined that law reform was a critical area for the future development of the region, USAID initiated several legal assistance activities, among them the Competition Policy, Laws and Regulations Project (No. 180-0026). This assessment focuses solely on the activities undertaken by USAID under the Commercial Law Component of the larger project.

B. The USAID Commercial Law Project

1. Initial Project Strategy

USAID embarked on its Commercial Law Project in 1992 by awarding grants to three organizations to support commercial law reform in four countries -- Albania, Bulgaria, Poland, and Lithuania. Limited activities were also authorized later in Hungary and Romania. Although virtually any aspect of laws regulating commerce or property rights can be considered "commercial" law, USAID initially narrowed the focus of the Project to four topical areas: (1) foreign and domestic investment; (2) commercial dispute resolution; (3) commercial real property and

intellectual property rights; and (4) government procurement systems. A fifth component, legal impediments to privatization, was later added.

When it set up the Project, USAID was concerned with providing rapid assistance to a broad range of activities in Eastern Europe. USAID and other assistance agencies have little prior experience in assisting commercial law reform and so there has been a considerable degree of experimentation in the mode and delivery of assistance in this area. With the experiences emerging from the Commercial Law Component, USAID is now ready to consolidate its experience and develop a more focused strategy. This report is intended to assist USAID in that process by drawing lessons and proposing options which it can use in developing a strategy for commercial law assistance in Eastern Europe and the Newly Independent States (NIS).

2. Project Constraints

USAID funded intervention in commercial law is subject to at least four major constraints, which undoubtedly affected the initial Project strategy and are likely to continue to affect any future project.

For one, USAID is a donor with relatively few resources. In this time of U.S. budgetary constraints and limited support for foreign assistance, the amount of resources available for legal reform in Eastern Europe and the NIS will continue to be limited. This constraint requires careful selection of activities including meticulous coordination with other international donor agencies.

Secondly, in Eastern Europe and the NIS, USAID has limited field staff to develop, oversee, coordinate, and implement its projects. This factor has influenced and will continue to influence the scale of assistance activities that can be undertaken and the selection of project implementation vehicles.

Thirdly, the time horizon for USAID legal assistance is in the range of five to ten years. Hence, any program must have a clear beginning, middle and end. The relatively brief period of intervention does not allow room for false starts or major alterations in course if a country expects to achieve identifiable results in commercial law reform.

And fourthly, USAID is under continuing pressure from the U.S. Congress to demonstrate the impact of its assistance activities. This factor favors projects with short-term, more clearly tangible and measurable results. Law reform, nevertheless, is a long-term process that can have a broad impact on the economy, society, and institutions - and one which is difficult to measure. Thus, USAID must maintain a long-term perspective even while responding to pressure for short-term results.

3. Implementation Vehicles

USAID awarded grants to three different Implementing Organizations (IO's) to carry out specific activities over the three year life of the Project:

- The Central and East European Law Initiative (CEELI) of the American Bar Association;
- The Commercial Law Development Program (CLDP) of the U.S. Department of Commerce; and
- The International Development Law Institute (IDLI) in Rome.

These institutions differ in mission, organization, experience, and institutional strength. CEELI is a relatively new organization established in 1990 to assist legal transformation in Eastern Europe. Its strength is its position as an adjunct of the American Bar Association, the largest voluntary, professional membership organization in the world. The CLDP, also a new organization, is an adjunct of the U.S. Department of Commerce. The Department has extensive resources and experience with international commercial transactions. CLDP draws largely on U.S.

government resources to train and provide technical assistance under the Project. IDLI is an international organization with an established track record and more than a decade of experience in training lawyers, judges, governmental officials, and other legal and economics professionals from developing countries.

The USAID grants to the IO covered a broad mandate and overlapping scopes of work. USAID's rationale was that three institutions with differing orientations, experiences, and strengths would take different approaches to law reform. Because of the overlapping nature of their scopes of work, the IO's were requested to work in a collaborative manner and to develop joint strategies for each target country so as to avoid duplication of efforts. From their varied experiences, USAID could then determine what works best in the new Eastern European environment.

III. The Assessment

A. Purpose of the Assessment

The main purpose of the assessment is to obtain information that can be used to improve the design and implementation of current and future commercial law projects. The study has two components: (1) a review and assessment of the effectiveness and impact of past project activities; and (2) a component that applies the lessons learned in order to propose options for assisting commercial law reform in the CEE and NIS. A copy of the scope of work for the assessment is attached in Annex A.

B. Boundaries of the Assessment

The assessment covers the activities of the Project in three CEE countries - Bulgaria, Poland and Lithuania. It is expected that the lessons from this experience will apply to the rest of Eastern Europe and the NIS as well. While not required by the scope of work, discussions during the assessment inevitably identified areas for intervention - some priorities are suggested in the report.

It is important to note that this study is an *assessment*, which differs from an evaluation in USAID parlance. An evaluation is a critical appraisal of performance of an assistance provider resulting in a judgment of the quality of that provider. An assessment appraises the relative effectiveness of various activities for the purpose of planning future activities. In short, this report assesses modes of intervention under Phase I of the Project rather than evaluating the performance of specific implementing organizations.

C. Assessment Team and Methodology

The analysis and proposals contained in this report are based on field studies in the three target countries as well as US-based interviews and reviews of documents. The study was undertaken by a team of consultants from Coopers & Lybrand working under the Private Sector Development Support (PEDS) III Contract. The team included a Team Leader, Flora M. Painter, a Managing Associate with the International Group of Coopers & Lybrand/Washington, D.C.; Marcie Lombardi, a lawyer and consultant with Coopers & Lybrand/Budapest; two Senior Advisors, Jeswald Salacuse, Dean of the Fletcher School of Law and Diplomacy at Tufts University, and Philip Wellons, Deputy Director of the International Financial Institutions Program at the Harvard Law School. In addition, the team had the support in Poland of the Director of the International Management Center at Warsaw University, Krzysztof Obloj, and in Lithuania and Bulgaria, of professional staff of the local Coopers & Lybrand offices.

Members of the study team spent two weeks in each country. In Lithuania and Bulgaria, field work was based in the capital cities of Vilnius and Sofia, respectively. In Poland, the team reviewed activities in Krakow as well as Warsaw. In addition, members of the study team held extensive interviews with staff of the IDLI in Rome, and with the home offices of CEELI and CLDP in Washington, D.C.

USAID selected the countries to be assessed. The assessment team chose the people interviewed from the IO's list of training participants, recipients of technical assistance, members of the Commercial Law Centers, trainers, and technical advisors. Interviews were based primarily on questionnaires and on the analytical framework attached in Annex B. In addition, the methodology involved an in-depth review by the team's legal specialists of selected training materials and reports prepared by the IO's. (A selected bibliography is provided in Annex C.) The questionnaire administered to training participants was translated into Lithuanian, Polish, and Bulgarian and sent to 100 participants in each country, providing added feedback on the training activities.

As part of the study, the team developed a series of performance indicators defined in Annex D and discussed in context in Chapter 3, Section III: *Framework for Evaluating the Impact of Assistance*.

CHAPTER 2: EFFECTIVENESS OF COMMERCIAL LAW ASSISTANCE

I. Introduction

A. Overview of Project Objectives and Types of Assistance

The objectives of the Commercial Law Component of the Competition Policy, Laws and Regulations Project were to assist the target countries to:

- Adopt fair and efficient laws and regulations;
- Identify an appropriate structure for effective implementation and enforcement of adopted laws and regulations; and
- Develop the human resources necessary for effective implementation and enforcement of adopted laws and regulations.

The three IOs carried out numerous activities in pursuit of these objectives during the three year period 1992-1994. For the most part, these activities fell into three categories: (1) training; (2) technical assistance; and (3) advocacy grants. The nature of these activities, their relative effectiveness, and their impact are the main subjects of this chapter.

B. Performance Measurement Considerations

Performance measurement is a difficult but critical activity for USAID. Continued support for legal assistance in Eastern Europe, like other forms of U.S. foreign assistance, is increasingly subject to demands for quick results and highly visible signs of success. The assessment of the Commercial Law Component provided an opportunity to test performance indicators that could be used to evaluate future progress and demonstrate the progress being achieved.

Individuals, institutions, and economic and social systems may all be affected by project activities, and the extent to which the impact can be measured clearly varies. Some indicators of impact, such as an increase in the availability and use of commercial law textbooks, may be easily measured through the use of simple, information management and tracking systems. Others, such as assessment of the development of problem solving ability and negotiation skills of a training participant, may be assessed through interviews but are obviously more subjective. Still others, such as the impact that reform of a commercial law had on a country's level of investment, are virtually impossible to attribute to a particular project because there are too many other variables. Finally, the measurement of impact, if applied properly, must take into account the time horizon of the assistance activity. The longer the time horizon, the more likely one can assess the full impact of the activity.

The challenge for USAID and any other donor organization is to apply performance measures that capture sufficient short-term impact to foster continued support for the project without skewing the choice of assistance

toward activities which have short-term influence but are less supportive of long-term development. In addition, performance indicators must be tied to the specific objectives of the project and must be adjusted as the objectives change.

Because the Commercial Law Project has been operating for less than three years, it is much too early to fully assess the impact of assistance activities. The objectives of some modes of assistance were not clearly defined at the outset of the project in that it was expected that the IOs would define them as their experience in promoting legal performance evolved. Consequently, performance indicators were not established at the beginning of the Project. As a result, the team could not assess the performance of various modes of assistance against an established set of benchmarks. Instead, the assessment had to be more qualitative than quantitative in nature. The assessment did, however, in response to a requirement in the scope of work, develop a series of performance indicators which were "tested" in the field, and which can assist USAID and the IOs in beginning to measure the impact of project assistance in a more systematic way.

C. Gender Considerations

The participation of women in the training activities sponsored under the Project has been quite extensive. Women have been involved primarily as participants and beneficiaries, but have also had a role in the Project as deliverers of assistance. This involvement, however, seems to have come about more because of the nature of gender relations in the legal profession in Eastern Europe than because of any specific targeting by the IOs. With the exception of IDLI, record-keeping on the gender of Project beneficiaries is inadequate for USAID purposes. Overall estimates are that perhaps 40% of all Project trainees have been women. It is worth noting, however, that all interviewees, especially women, when questioned about the role of gender in the Project, indicated that the issue was irrelevant in the Eastern European context, at least within the legal profession. For example, approximately 80% of judges in the target countries are women, and the ratio of female to male law students and practitioners is reportedly quite high. The main difference in gender distribution within the commercial law area appears to be more closely related to the division between the public sector and the private sector. A significantly greater proportion of female lawyers continue to work in the public sector, while male lawyers are more rapidly joining the ranks of the private sector. As a result, Project activities are more likely to benefit women to the extent that they focus more assistance to the public sector. Training of judges, for example, would clearly benefit a larger proportion of women.

II. Review of Training Assistance

A. Overview of Training Activities

1. Background

Assistance under the Commercial Law Project has included both short-term (less than 3 months) and long-term (3 months or more) training activities to support the transfer of skills or knowledge in a particular substantive area of law (e.g. insolvency) or transaction/activity (e.g. project finance or negotiations). Three modes of training were used during the Project's first phase: (1) workshops; (2) law faculty internships; and (3) law firm internships. Workshops were offered in-country, in the region, in Rome, and in the United States. The internships were all held in the United States.

All three IOs were involved in training activities. IDLI offered skills training courses from its Rome curriculum, pre-existing courses adapted for a particular country, and courses especially designed for a particular country. IDLI training activities were limited to 30 participants each and ranged in duration from five days for in-country workshops to three months for the Rome-based Development Lawyers Course. CLDP conducted five-day in-country workshops utilizing its standard training modules designed for Central Europe, sent local specialists to "pre-packaged" (e.g., not specifically designed for Eastern Europe) courses in the United States, and managed the placement of local lawyers in U.S. law firms for two to five month internships. In conjunction with CEELI, CLDP also placed 15 law faculty participants in five month internships. In addition, CEELI conducted short-term

in-country workshops and longer regional workshops. To avoid duplication with IDLI, CEELI's in-country workshops focused on providing shorter (one to two day) seminars aimed at a broader audience (targeting up to 50 participants per workshop). CEELI workshops sought to inform students about an area of law and to generate interest for continuing legal education (CLE).

2. Lessons on Training Effectiveness

The effectiveness of the various training activities has been influenced by a number of important factors:

(a) The use of training methodology and skilled instructors. The IDLI training workshops have proven to be particularly successful because they utilize an interactive teaching methodology that effectively engages the participants. Skilled instructors and the inclusion of a course facilitator promote the methodology's effectiveness. Courses that relied solely on lectures were less effective even though the lecturers were highly qualified lawyers.

(b) The incorporation of local context into training activities. The assessment found that this local context factor is one of the most important determinants of the effectiveness of training activities. The IDLI workshops in-country, for example, have been particularly effective and well-received because they relate the training material to the local context. Course instructors familiarize themselves with relevant sections of local legislation, and local experts participate as lecturers in many of the workshops. The use of an interactive training methodology also makes it easier for instructors to relate material to the local context. By comparison, workshops like CEELI's "Environmental Issues in Privatization Transactions," in Warsaw and the franchising seminar in Bulgaria were much less effective because speakers failed to relate their presentations about U.S. issues to the local context.

(c) Comparisons with other European legal systems rather than the U.S. system. Because CEE law is based on the civil law system, and because CEE countries are seeking to harmonize their systems with the European Union, training activities which drew comparisons with other European countries, instead of the United States were generally more effective. Moreover, because historically each CEE country's legal system has been more heavily influenced by a particular country or set of countries (e.g., the Lithuanians by the Germans; the Polish by the Germans and Austrians; the Bulgarians by the Germans and French), comparisons with those systems often are more relevant. The value of comparisons with the U.S. model is greater for certain substantive areas (e.g., banking, and intellectual property) and for transactions and practical applications (e.g., corporate restructuring, negotiations and alternative dispute resolution).

(d) Needs assessment and follow-up. Needs assessments and follow-up were not consistently undertaken by some IOs. While this presented less of a problem in countries like Lithuania where the demand for any kind of training is very high, it limited the usefulness of some workshops, because of inadequate targeting of the audience or the topic. Lack of needs targeting is especially a problem in Poland where the legal community is better trained and the legal profession more developed. Similarly, systematic evaluation and follow-up after each training activity would have helped to pinpoint areas in need of attention. In Lithuania, for example, many training participants indicated that the commercial law workshops offered under the Project were too narrow, citing that the same group of individuals comprised about 80% of the attendance at every workshop. Adequate follow-up would have highlighted the need to either target a different audience for the same types of topics or to offer more advanced or different topics for the same audience. The training evaluation system that IDLI relies on minimizes the "repeat" participant issue, and should be used in some form by the other IOs. IDLI has extensive experience in this area and could provide useful guidance to other IOs for improving training evaluation and feedback mechanisms.

(e) Integration of the training activity into a broader plan. For the most part, training activities under the Project operated autonomously. These activities were not part of a pre-designed training cycle and were not always coordinated with other modes of assistance. When they were, however, they were much more effective. For example, conducting the IDLI training of trainers course as a complement to the efforts by CEELI to support the development of a judicial training institute under the Rule of Law Project has been very effective. Similarly, workshops that were conducted specifically to support law makers and drafters working on a particular piece of

legislation were also quite effective. Examples of this are the CEELI bankruptcy workshop in Bulgaria and the CLDP procurement workshop in Poland. In both instances, the workshops built on other assistance activities under the Project. In the first case, the workshop was timely and supplemented other CEELI efforts to support discussion and review of bankruptcy legislation. In the second case, the workshop was organized to train trainers in the area of procurement and directly supported and built on the work of CLDP's procurement advisor.

(f) Targeting the appropriate audience. The IOs utilize different approaches to target audiences and select participants for their training programs. IDLI, for example, has been very successful in the selection of participants for its Rome-based training workshops because it has developed a systematic application procedure that involves careful evaluation of potential participants. For in-country workshops, however, IDLI, like CEELI and CLDP, often relies on a local representative and/or a local counterpart organization (e.g., the Commercial Law Centers) to select the target audience. On one hand, this approach is effective because it promotes local participation in the selection process. On the other hand, because some of these local counterparts have limited training experience, the selection of participants has not always been optimal.

(g) The language of presentation and quality of the translation. Participants in all countries felt that instruction in English with translation services was very effective for in-country workshops and that, overall, the IOs have provided high quality translation services. As long as effective translators were available, the language of the presenter had little or no impact on the effectiveness of the training activity. The language of presentation, however, does influence the choice of participants. U.S. based activities, like the law school and law firm internships, for example, require fluency in English. Clearly, language ability limits the pool of individuals who can benefit from these activities. In Lithuania, for example, the team was told that many of the best lawyers are not the English speakers and so these individuals are excluded from the training sessions.

(h) The location of the workshop. Workshops held on site tended to be less effective than those held outside the workplace. On-site workshops make it easier for participants to walk in and out, while off-site activities enable participants to become more engaged. For example, the effectiveness of the workshop in Warsaw on Environmental Issues was reduced because it was held at the Ministry of Ownership Changes where key participants had their offices at the Ministry and came in and out of the sessions.

Whether a training activity was held in-country, in the region, or in the United States did not, per se influence the effectiveness of a training activity. Venue was important only to the extent that it facilitated or inhibited attendance.

(i) Training materials. Materials that included model transaction agreements and other practical information were perceived to be more useful and were more frequently referred to after the training activity than those which were more informational in nature. The extent to which these materials took into account the local context and facilitated comparisons with other European countries affected their usefulness. The IDLI seminar materials were generally singled out by participants as providing the most useful types of information.

B. Assessment of Training Modes and Key Priorities

1. Workshops

The topics of the training workshops sponsored by the Project fall into two categories: transaction-oriented topics (e.g., negotiations, project finance) and substantive-oriented topics (e.g., environmental law). These topics were presented in two types of formats: skills-oriented workshops aiming to transfer skills to the participants, and information-oriented workshops aiming to familiarize participants with a particular law topic. The demand for training varies among different groups of beneficiaries. According to private sector lawyers in the target countries, particularly Poland and to a lesser extent Bulgaria, the demand for short-term, transaction-oriented and skills-oriented training is greater than for informational types of training. (CLDP's "International Project Finance" workshops and IDLI's "Negotiating Techniques & Joint Ventures" received great reviews across the board and

were used as examples of the types of training that are most needed in the CEE.) The demand for substantive topics, on the other hand, is higher when the presentation of those topics is directly related to the local context and, therefore, is more practical than theoretical. The demand for substantive topics is also greater among certain groups of beneficiaries, especially those in academia and in the judiciary.

Informational types of workshops are in greater demand in Lithuania than in the other two countries, but even there they are seen as a lower priority relative to transactions and skills-oriented topics. Because the latter types of training are more focused on the development of practical skills, the impact of these types of assistance may be more visible and sustainable, and thus more easily "measured" than those of purely informational types of training. This is not to say that informational training is not valuable. The value is often of a more subtle nature, but is important in building relationships among individuals in the legal profession. This networking function may result in consensus building over the longer-term, an important objective of the Project. For example, CEELI's afternoon or one-day seminars in Bulgaria, which are held at the Center for the Study of Democracy, have helped this organization become a place for discussion of legal topics in the country - an important achievement which may yield increased consensus and support for legal reform in the future.

The pattern of demand has changed over the course of the Project. In the beginning, there was a demand for almost any type of information. Over time, demand for commercial law training has become more discriminating now that legislation has been revised and new laws have been put in place. There is growing recognition that legal professionals lack the knowledge and skills to implement and enforce the new legislation. Judges in the target countries, for example, lack experience in modern business agreements or in applying new commercial legislation to such agreements, although they also need and want substantive knowledge. To respond to this shift in demand, it is recommended that the next phase of the Project emphasize:

- More focused training. The workshops need to focus on a narrower set of topics and should form part of a long-term plan which also takes into account and builds upon other types of Project assistance.
- More selective recruitment. All IOs will need to focus more on the selection of training participants. While relying on the local counterparts is a good approach in that it promotes capacity transfer and sustainability, IOs may need to train or work more closely with these counterparts at least in the initial stages of development of training programs.
- Context of workshops. The extent to which some IOs have taken into account the local context and drawn comparisons with the more relevant European models has varied. Because the effectiveness of training activities is so closely related to this issue, implementing organizations, especially CEELI, will need to give increased attention to this matter. IDLI workshops and CLDP's in-country workshops both provide good models for how IOs can better relate the local context to the topic under discussion.
- Relevance of training materials. An extensive review by the team found that training materials were not always relevant to the topic being covered in the training sessions. The most effective materials were those that provided model documents appropriate to the local context, case studies, and brief background materials explaining fundamental concepts directly related to the training topic. The materials for IDLI's Project Finance Workshop in Poland provide an excellent model of effective training materials. The manner of presentation of CLDP materials is also particularly useful for demonstrating how to lay out these documents.

2. Law Faculty Training

The law faculty internship program administered jointly by CEELI and CLDP placed commercial law professors in US law schools for a semester. The purpose of the program was to encourage and assist law professors in developing new or revised curricula for teaching commercial law topics. The assessment found that this type of activity is in great demand in the three countries under review, and that law school deans are supportive of the

program. Law schools in the target countries are facing serious financial difficulties. In Lithuania, in fact, the situation is serious enough to threaten the survival of the law school. Yet, law schools are essential self-sustaining agents that can support development long after donor assistance has ended and assistance to law schools should be a priority for the region.

The law school program has been quite effective. Virtually all of the participants interviewed by the assessment team indicated that they have either revised their curricula or developed new ones. Some participants are already teaching courses in commercial law that either did not exist or were previously taught using different approaches. Moreover, in addition to gaining substantive knowledge and new legal materials and information, participants learned new methods and approaches to teaching law. The internship program also had other less tangible yet desirable benefits, such as increased confidence on the part of law professors and increased contacts among local law professors and between the interns and U.S. professors. The program has also led to the transfer of basic skills, such as how to do legal research.

Among the most effective elements of the program were the mentor activities at the host institution and the curriculum development session in Washington, D.C. at the end of the internship. Mentor activities are critical because participants need considerable orientation about the differences between the U.S. and European legal systems. Mentors also helped the interns relate what they were learning to their own context, and promoted the development of skills (e.g., research). The session in Washington, D.C. was useful because it gave interns an opportunity to consolidate what they had learned and to see the actual workings of the U.S. legal system through visits to US government offices and law firms. It also provided an opportunity for increased interaction and relationship-building among the participants.

Despite the considerable success of the program, the assessment revealed certain weaknesses in program administration which should be addressed in the next phase of the Project. Improvements can be made in:

- Selecting participants. Systematic selection procedures have not been implemented by any of the IOs.
- Notifying participants. Several participants complained that they did not have sufficient notice of their selection to prepare adequately for the trip. In fact, one participant arrived when the semester had already started, which made the adjustment more difficult.
- Matching participants with host institutions. Some participants indicated that their interests did not match the areas of specialization of the host law school, and that this clearly limited the usefulness of the program. One participant seeking to specialize in intellectual property law, for example, was placed at a university with virtually no capabilities in that area. The university offered only one course in the subject, and that course had been offered the semester prior to the participant's arrival.
- Applying to IOs' institutional strengths. Because of its access to the resources of the ABA, and because the ABA accredits law schools in the United States, CEELI seems particularly well-suited to the administration of the law school internship program. Among government agencies, the U.S. Information Agency, in addition to USAID, has more experience in managing U.S. based university training programs.

3. Law Firm Internships

The demand for law firm internships is higher in Bulgaria and Lithuania than in Poland, partly because Poland has been more successful in attracting foreign law firms to hire some of the best trained local lawyers. Ironically, the law firm internship program has been more successful in placing Poles than Bulgarians or Lithuanians. This phenomenon is attributed to the characteristics of the IO, and the incentives for U.S. law firms to participate in the program.

The law firm internship program has been managed by CLDP with some difficulty. Despite its best intentions, this internship program is not well-suited to the institutional strengths of this organization. Unlike CEELI, CLDP has little if any influence with U.S. law firms. Thus, it comes as no surprise that CLDP has had found it difficult to find law firms interested in sponsoring interns. Also, management of this type of internship program is staff-intensive and during the first phase of the Project, CLDP had limited staff dedicated to managing this activity. Collaboration between CLDP and CEELI in respect of this activity would have made the program more effective.

Law firms in the U.S. have become particularly interested in the internship program because it attracts local lawyers to work for their offices in the CEE. This explains why CLDP has been able to place Poles, but not Bulgarians and Lithuanians. Some of the Polish participants in the program are in fact now working for the overseas offices of the host firm, although others have joined other law firms or have set up their own practices. CEELI should be able to turn the incentive to U.S. law firms into significant support for and financial leverage for the program.

The principal benefits of this program have centered on the transfer of practical managerial skills, such as how to manage a client or how to organize a law practice, as opposed to strictly technical legal skills. This type of skills transfer has been very well-received by the participants and many of the people interviewed indicated a real need in the target countries for this type of training. In addition, the program had some less tangible benefits such as development of relations between CEE and U.S. lawyers and goodwill towards U.S. law firms.

Weaknesses in program implementation which require attention include:

- Marketing to law firms. A different approach to recruitment of law firms will be required to place additional interns, particularly those from the southern tier countries of the CEE region. This will require involvement of an IO that has the kind of leverage that CEELI has through the ABA.
- Preparing participants. Some of the interns interviewed complained that they had inadequate lead time to prepare for the trip and that some host firms were not adequately prepared for the intern's arrival.
- Matching interns with host firms. Some participants complained that their host firm specialized in areas in which they had little or no interest.

C. Assessment of Training Impact

The assessment encountered considerable evidence that the various modes of training assistance have had a positive developmental impact overall, despite the short life of the Project. The extent to which the team was successful in assessing the impact of the various activities, however, was clearly related to the nature of the activity and the extent to which the objectives had been clearly defined, as well as to the quality of the record-keeping and performance tracking mechanisms of the IOs. Because IDLI's management of the USAID grant has been particularly meticulous, the team was better able to assess the effectiveness of their activities than those of the other IOs. For example, IDLI maintains excellent records on the identity and whereabouts of training participants, which makes it easier for the team to find and interview project beneficiaries going forward. Regardless, an effort has been made to present indicators for all the IOs.

1. Training Impact

(a) Skills-based training workshops have increased the capacity of local professionals to understand, analyze and perform commercial law transactions. Interviews with participants in IDLI training workshops consistently indicated, across all three countries, that their legal skills had improved as a result of the workshops, and that they used their new skills at their work. For example, many participants noted that after the workshop they were better able to understand the structure and function of commercial agreements and were better able to analyze and draft

commercial documents. Participants in CLDP's in-country workshops also consistently pointed to an improvement in skills and thus to an increase in individual local capacity.

(b) Informational training workshops have spurred interest in continuing legal education and discussion of commercial law reform. CEELI workshops, coupled with CEELI support for local bar associations, met their objective of increasing interest in continuing legal education. In Bulgaria, for example, CEELI's workshops have encouraged the establishment of local training institutes and have assisted the Center for the Study of Democracy in developing a continuing legal education program. In addition, workshops on topics such as bankruptcy and copyrights contributed to increased discussion of commercial legislation in Bulgaria.

(c) In-country workshops and law firm internships have increased interest in new commercial transactions. The franchising workshops have generated interest in promoting franchising in Poland. In Krakow, for example, a participant in CEELI's franchising workshop is now providing consulting services to promote franchising. A participant in the law firm internship program, who was placed in a firm that specializes in franchising, is now also advising on franchising opportunities in Poland.

(d) Workshops and law faculty internships have increased networking and have increased the potential for consensus building among the legal community. Participants in the law faculty internship program, who are now also active participants in in-country workshops in Lithuania, have convened a "First Friday's Club". The group meets the first Friday of every month to discuss commercial law and other legal topics.

(e) Law faculty internships and in-country workshops have influenced the involvement of participants in more complex commercial law activities. A female participant from Lithuania, for example, set up her own law firm after returning from her internship in the United States, while continuing to teach on a part-time basis. She is now an active participant in in-country workshops and is requesting more specialized seminars.

(f) In-country workshops have helped to increase access to legal information through their impact on the development of a local legal translation capacity. In Lithuania, for example, legal translators were virtually non-existent. In-country workshops, because they require translation from English to Lithuanian and vice-versa, have facilitated the development of a local legal translation capacity which has made legal information more accessible.

(g) Training materials developed for in-country and U.S. based workshops are used by legal professionals in their place of work. Participants in IDLI's in-country workshops repeatedly noted that they refer to the model transactions agreements provided in the training documents. Participants in CLDP's procurement and insurance workshops in the U.S. also indicated that they refer to and use some of the course materials.

(h) Training activities have increased interest in creating local organizations that can support continuing legal education. Interest in establishing a foundation to train Bulgarian judges grew partly out of in-country workshops and U.S. training activities which promoted discussion of commercial law topics and built awareness about the importance of training judges to support the changing commercial law environment.

(i) Law faculty internships have improved commercial legal education. The faculty training program administered by CEELI and CLDP has improved the commercial law aspect of law curricula. The objective of the program, which was defined in part as the preparation of a market oriented course on commercial law, has been reached in one form or the other by all participants interviewed. Concrete results included addition to the law school curriculum of an entirely new commercial law course and introduction of a comparative element to existing courses.

(j) Law faculty and law firm internships have led to increased interest in U.S. legal approaches and new relationships between the U.S. and local legal communities. As a result of these programs, access to commercial law information has increased (interns have stayed in touch with their U.S. hosts and continue to share legal information) and interest in U.S. legal approaches has also increased. Some participants who were previously

skeptical that U.S. models could be of any use for commercial law development in Bulgaria, for example, now feel that they can be quite useful in certain areas and can be effective when used as a point of reference or comparison.

(k) Law faculty and law firm internships have improved the professional position of program participants. The new knowledge and skills gained during these internship programs have enabled participants to improve their employment opportunities. In addition to teaching, some participants in the law faculty program now also have or work in a private practice.

D. Cost-Effectiveness of Training

The assessment of the Commercial Law Component of the Competition Policy, Laws and Regulations Project included an analysis of the cost effectiveness of each of the various modes of training supported by the Component. As in the case of the assessment of the impact of the various activities, the information on the cost effectiveness of the different training formats can be useful in the design and implementation of future law reform efforts.

1. Methodology

The analysis of the Commercial Law Project training activities examined the cost effectiveness rather than just the cost of training on a per participant basis because of the misleading conclusions that are often drawn from the simpler analysis. Training effectiveness can be measured in quantitative terms through test scores or after sufficient time has passed to show the effects of skill or knowledge transfers. These conditions are not applicable to the training provided under the Project; it was necessary to rely on the qualitative data presented in the previous section to establish the effectiveness of each of the training modes.

The costs associated with training activities were defined in a cost methodology developed at the start of the assessment. A description of the methodology and a request for cost information required by the methodology was sent to each of the grantees. A completed response was received from IDLI 3 days after the request was made. Incomplete cost information was eventually provided by CEELI and CLDP nearly three months after the initial request. The information provided by CEELI and CLDP did not include costs associated with home office activities in support of training activities although this information was requested and was vital to the analysis proposed in the original cost methodology. The USAID Technical Project Officer was not able to provide the information from the monthly and other progress reports submitted by the grantees. Short of an audit (which was outside the scope of work for the assessment) there was no other information.

In the absence of information on home office support costs for two of the three grantees, it was not possible (as included in the original cost methodology), to compare the grantee costs with those of a for-profit contractor carrying out similar training activities in Poland. Accordingly, this comparison was dropped from the analysis of costs (with the approval of the Technical Project Officer). The procedures that were followed to work around the unavailability of the cost information required by the original methodology are described below.

2. Training Cost Elements

It is reasonable to assume that for a specific mode of training, for example, one day in-country workshops, the functions that must be carried out to present the training are essentially the same and do not differ much among performing organizations, i.e., CEELI, IDLI, CDLP. Differences in the cost of conducting the training that do appear are because of differences in the amount of time devoted to each function by the organizations and to differences in the cost of inputs (labor and materials). Differences in the amount of time devoted to organizing and presenting a specific type of training can reflect the relative advantage of using one grantee to deliver one type of training and another grantee for another mode. For example, IDLI and CDLP devote more time to travel and require more time to finalize logistics arrangements for in-country training than CEELI, because, unlike CEELI, they might not enjoy the advantage of a person already resident in the target country.

The major determinants of the total cost of training provided by any of the grantees are: 1) the labor (time) devoted to the activity; 2) the cost of the labor (\$ per hour or per day) to the grantor, and 3) related expenses such as for travel (participants and facilitators) and for materials preparation. Expenses can be omitted from the analysis as they are the same for a given mode of training regardless of the performing organization.

Accordingly, labor costs and the time devoted to supporting and conducting training are the two most important elements in determining the cost of providing each type or mode of training. The USAID grants are supporting the home office costs of each of the grantees; it is easy to determine these costs from the grant documents. Because IDLI is only engaged in training, all of its home office costs can all be attributed to training support. However, CEELI and CLDP carry out other activities in addition to training; it is necessary to allocate the home office costs covered by the USAID grants between training and technical assistance. The basis of the allocation is the relatively low level of effort devoted to these activities by CEELI and CLDP. The other cost component of training is the labor cost of the individual(s) who actually deliver(s) the training. This cost varies widely depending upon which grantee is providing the facilitator. In the case of CEELI, there is no cost incurred for facilitators because CEELI provides these personnel on a volunteer basis. In general, there is no cost to the grant for facilitators provided by CLDP, but there is a cost to the US Government - these personnel typically are government employees. IDLI facilitators are paid from grant funds. The estimated costs per training day for each of the IOs is shown in Table 1 below.

Table 1 - Estimated Costs Per Day of Training				
Grantee	Direct Costs	Home Office Costs	In-Kind Contribution	Total Costs⁴
CEELI	\$4,838	\$4,442 ¹	\$14,400 ²	\$ 9,280
CLDP	\$3,059	\$ 461 ¹	\$ 1,000 ³	\$ 3,520
IDLI	\$7,576	\$2,548	N/A	\$10,124
<p>¹ Home office costs are estimated from grant budgets submitted to USAID by CEELI and CLDP and are based upon an allocation of equal time to support for training and technical assistance activities. Costs shown for IDLI are based upon actual cost experience.</p> <p>² From estimates provided by CEELI.</p> <p>³ Estimate based upon two-person days provided by USG employees at SES Level IV.</p> <p>⁴ Total Costs divided by the number of participants in a training session will yield an estimate of the cost per participant.</p>				

The estimates in Table 1 are taken from the experiences of the three IOs in delivering short-term (one week or less) training in-country. This is the only training mode that the three organizations have in common; and therefore, the only mode that provides a basis for comparison of costs among the three grantees. It should be noted that this analysis favors CEELI in that it can rely on its liaison person to organize in-country activities. CLDP and IDLI must either attempt to organize from a distance or incur the expense of an advance trip to organize the training.

Table 2 below compares the relative costs of the five modes of training relied on in the Commercial Law Component to enhance skills and provide an orientation toward commercial law as practiced in free-market economies.

Training Mode	No. of Participants	Cost per Participant¹
Short-Term In- Country	849	\$ 675
Rome-Based Short-Term	36	\$1,652
US Based Short-Term	41	\$3,233
US Based Long Term Faculty Training	15	\$8,443
US Based Long-Term Internships	11	\$6,500
¹ Based upon cost estimates submitted by grantees. Short-term training is average of costs reported by three organizations.		

3. Training Effectiveness

The qualitative review of training presented in the earlier sections as indicated in the *Analysis of Training Questionnaire Responses* (Annex A) provide an accurate and sufficient indication of the strengths and weaknesses of each type of training activity. A longitudinal study obviously would provide more conclusive results regarding the outcomes and the effectiveness of the training provided by the Project. Additional time would be required for an analysis of that type.

The analysis of the responses by participants in the training sponsored by the Project revealed some unevenness in the relevance and targeting of the training, but indicated that, overall, the training was effective. The analysis also pointed out that any of the modes of training can be effective depending upon the objectives of the training. The relative cost effectiveness of each of the modes in meeting the various objectives of the Commercial Law Component is summarized below in Table 3.

Training Mode	Improving Awareness	Improving Knowledge	Improving Skills
Short-Term In-Country	High/\$Low	Moderate/\$Low	Low/\$Low
Rome-Based Short-Term	High/\$High	High/\$Moderate	Moderate/\$Moderate
US Based Short-Term	High/\$High	Low-Moderate/\$High	Moderate/\$High
US Based Faculty Training	High/\$High	High/\$High	High/\$Moderate
US Based Internships	High/\$High	High/\$High	High/\$Moderate

Table 3 shows the importance of selecting a training mode that is consistent with the training objectives if reasonable levels of cost-effectiveness are to be achieved. For example, short-term in-country training is a highly effective and a relatively low cost vehicle for increasing awareness and developing support for commercial law reform. As awareness of commercial law topics improves, however, it will be necessary to move to other modes (and incur higher costs) in order to achieve reasonable levels of effectiveness.

III. Review of Technical Assistance

A. Overview of Technical Assistance

1. Background

The Commercial Law Project has provided technical and financial assistance through small grants (called "advocacy grants") to non-governmental organizations. Although the distinction between training and technical assistance is sometimes blurred, technical assistance generally differs from training in that technical assistance is task-specific and involves giving advice rather than enhancing skills or increasing the knowledge base. Technical assistance in this assessment is grouped into four categories: (1) long-term, foreign resident advisors; (2) medium-term and short-term foreign advisors in-country; (3) short-term, out-of-country specialists; and (4) institution-building grants. Long-term technical assistance refers to advisors who reside in-country for one year or more. Only CEELI provided long-term advisors under the Project. The second category includes both short-term (less than two months) and medium-term (2-12 months) assistance provided in-country by foreign advisors from CEELI and CLDP. The third category refers to short-term technical assistance that did not involve travel to the host country by the foreign advisor - for example, when CEELI prepared concept papers or commentaries on draft legislation. The fourth category refers to the "advocacy" grants provided by IDLI and CEELI, as well as to the technical assistance and in-kind support which have been used to supplement the grants. Supplemental support has included institution-building missions by IDLI, donations of law books and materials by CLDP, and day-to-day support by CEELI's resident *liaisons*, the title given to its long-term advisors by CEELI.

The Coopers & Lybrand team also held discussions with representatives of the IRIS-Poland and the Federal Trade Commission/Department of Justice (FTC/DOJ) projects regarding their activities in support of law reform in Eastern Europe. The following section draws comparisons with these projects in discussing the experience gained under the Commercial Law Project.

2. Assessment of Effectiveness of Technical Assistance

The effectiveness of the various modes of technical assistance supported by the Commercial Law Project are influenced by a number of key factors. Some of these factors have to do with the process that was followed and, thus, are more easily addressed by the IOs. Others involve policy-related forces or external conditions that should be taken into account by the IOs, but may be largely beyond their control. These factors are discussed below.

(a) The extent to which the advisor selected had the right mix of expertise, experience, and personal traits for the assignment. Not surprisingly, the personal qualities of the individual advisor were the most important determinants of the effectiveness of technical assistance, regardless of the purpose or duration of the assistance. While individuals with considerable (5 or more years) international experience, significant (more than 10 years) work experience, skills in at least one foreign language, and a mix of private sector and public sector experience tended to be among the most effective advisors, no single profile emerges from the effective commercial law advisors encountered by the team during the assessment. Effective but very different advisors were encountered for all IOs under the Project. The "ideal" personal characteristics and qualifications varied with the nature and objectives of the assignment. What can be stated with certainty is that IOs that rely on a well-defined process for identifying candidates and apply clear and appropriate criteria for selecting advisors are more effective.

(b) The extent to which the purpose, objectives, and parameters of the assistance have been clearly defined and understood by both providers and recipients of assistance. Technical assistance was more effective when IOs worked with advisors and recipients in defining clearly the purpose, objectives, and parameters of the assistance ahead of time. The effectiveness of some CEELI resident advisors, for example, was limited by the open-ended nature of their work in-country as the individual often had to establish assistance priorities. As a result, technical assistance often involved a series of ad hoc activities rather than constituting parts of a cohesive plan. Well-focused and clearly defined assistance, on the other hand, such as CLDP's technical assistance in

procurement in Poland yielded substantial benefits. CLDP's success in Poland was possible in part because a terms of reference (TOR) was negotiated with the recipient entity prior to placing the advisor. The resident procurement advisor wrote her own TOR and it was vetted with and approved by the recipient Ministry and USAID. Negotiating a TOR served to create a shared understanding of the goals, specific tasks, and parameters of the assistance, and can be a useful tool in the provision of technical assistance.

(c) The extent to which there was adequate advance preparation of the technical assistance advisors and the recipients. Both the technical advisor and the recipient require adequate time to prepare for the technical assistance mission. The technical advisor needs time to become familiar with the local context and, at a minimum, understand key differences between the U.S. and local legal systems. The most effective CLDP advisors had as much as two months of lead time to prepare for their field assignments. The FTC/DOJ also recruits advisors 3-6 months ahead of time to allow for preparation, including language study. FTC/DOJ field personnel and administrators described the preparatory phase as crucial to their success. Likewise, recipients must have adequate time to assess their needs and to identify counterparts and initial projects for the advisor. In Lithuania, for example, a former government official noted that his Ministry failed to fully utilize an extremely resourceful and highly experienced CEELI advisor because they were not prepared for the assistance and had not identified their needs clearly.

(d) Whether an adviser is paid or not. This issue in and of itself does not affect the effectiveness of the assistance provider. This factor is important only to the extent that it affects the ability of an IO to find the right candidate for the position. Information gathered during the assessment regarding the qualifications, experience, and performance of foreign advisors suggests that for short-term positions a large pool of highly qualified volunteers is available to support commercial law assistance activities. The task is much more difficult when long-term resident advisors are involved because individuals with the seniority and level of expertise required under this Project are much more reluctant to leave their jobs and commit their time for an extended period on a voluntary basis.

(e) The relative duration of the assistance. While the duration of technical assistance is not important per se, the duration of the assistance in relation to the objectives of the assistance is very important. Short-term advisors, for example, can be used effectively to respond to very specific needs that may arise on short-notice. Long-term advisors, on the other hand, may be particularly useful in less mature countries, which require assistance with needs identification and day-to-day decision-making, and where there are fewer well-trained, local legal professionals. Flexibility in the duration of technical assistance advisors is also an important factor. In Poland, for example, a government official was very reluctant to accept a foreign advisor, and somewhat reluctantly accepted a CLDP advisor for a three-month period. Yet, shortly after the arrival of the advisor, when it became clear that she could and did make substantial contributions in the development of procurement legislation, the official lobbied for an extension of the advisor. In this type of situation, flexibility is useful to ensure continued support for law reform at an opportune time and to establish a firm rapport with an organization.

(f) The extent to which an advisor has knowledge of the local language. Lack of knowledge of the local language in and of itself is not a critical determinant of the effectiveness of a technical assistance advisor if adequate provisions are made by the IO to facilitate communication between advisors and recipients. The FTC/DOJ, for example, hires a local interpreter to work with the technical advisors on a permanent basis during the duration of the assistance. FTC/DOJ does, however, also require language training for the advisors both before and during their field assignments and requires that all advisors have knowledge of at least one foreign language. Nonetheless, the longer the period of duration of the advisor, the more important local language capabilities become. A long-term adviser must be able to move swiftly among and be accepted by the local community to a greater extent than the short-term advisor. The long-term advisor must also develop an in-depth understanding of key institutions and individuals.

(g) The extent to which technical assistance is well coordinated with other activities and donors. The multiplicity of donors providing assistance for commercial law reform in the CEE requires effective coordination to maximize impact. The limited resources which USAID and the IOs have committed under the Commercial Law Project also demand that resources be coordinated and leveraged with those of other projects and donors. The

FTC/DOJ has addressed this issue by making coordination with other donors a key responsibility of its project administrators. The assessment found that greater coordination with other donors is required under the Project, particularly in the law drafting area because many European donors are also supporting that phase.

(h) The extent to which technical assistance includes participation of local counterparts. The role of local counterparts in technical assistance activities is critical to their effectiveness. The achievements of the IRIS-Poland Project in promoting reform of collateral law, for example, have resulted in large part from the ability of the long-term advisor to work with and mobilize local groups and individual policy makers in support of law reform. Local involvement creates a sense of "ownership" and makes assistance more sustainable. The FTC/DOJ advisors also stress local participation in project activities as a key element of their technical approach. Likewise, CLDP requires that the recipient commit resources to project development and implementation.

(i) The extent to which technical advisors have resources at their disposal to support reform. An important factor that the IRIS-Poland advisor considers key to the success of his project is the availability of resources at his disposal to respond to requests from policy makers or potential advocates of reform for additional technical assistance, information dissemination, and other resources. Demonstrating that the advisor can command substantial resources at critical junctures of the reform process increases the credibility and leverage of the long-term advisor. For the CEELI advisors, those instances when the home office could provide the required support greatly enhanced their credibility.

(j) The type of assistance approach. Technical assistance has been less effective because of the reactive or "demand-driven" approach of the IOs during the first phase of the project. While this approach was in line with the objectives of USAID at that time, the lack of focus of Project activities appears to have limited the impact of assistance in the sense that many different areas were touched upon, while concentrated efforts were more limited. A more pro-active and focused approach that early on establishes clear parameters and assistance priorities in collaboration with local counterparts will enable the IOs to have greater control over the allocation of scarce resources. Moreover, the concentration of resources in a few key areas will increase the likelihood of impact in critical areas.

(k) The type of law as well as the stage of development of the law. The effectiveness of U.S. technical assistance varies with the type of law (e.g., U.S. advisors may be less useful for advice on a commercial code, but more useful for advice on insolvency law) as well as with the stage of intervention of the assistance. U.S. experience is perceived to be more valuable at the early stages of law development when U.S. advisors help drafters identify basic issues, or in the implementation and enforcement phases when U.S. advisors can help with practical issues. As for substantive areas, U.S. strengths are perceived to be: insolvency, banking, intellectual property, foreign investment and trade, and competition.

(l) The extent to which technical assistance is adapted to the local context and to the regional legal traditions. As with training, two other factors are key to the effectiveness of technical assistance: the extent to which the assistance provider understands and is able to relate assistance to the local context, and the extent to which technical advisors can draw on the experience of other civil law countries in Europe as opposed to the United States. The usefulness of activities like CEELI's concept papers or commentaries on draft legislation by specialists from and in the United States, for example, was directly related to these factors.

(m) External factors. The effectiveness of technical assistance has also been limited by factors which are not under the control of the IO, such as changes in government. In Bulgaria, for example, the change in government has limited opportunities for the passage of new commercial legislation. Thus, the impact of assistance in law drafting may be limited because of forces beyond the control of the advisors. In Lithuania, also, the current government has been less receptive to foreign assistance than the previous one. CEELI advisors, for example, have encountered difficulties in working with the Ministry of Justice, their designated counterpart. CLDP, too, is having difficulty finding clients in Lithuania for its technical advisors. The preference in Lithuania currently seems to be for "less intrusive" forms of assistance, such as "getting the money" instead of advisors, or obtaining legal information and materials.

B. Assessment of Technical Assistance Modes and Key Priorities

1. Foreign Resident Advisors

Of the three implementing organizations, only CEELI has had long-term resident advisors under the Commercial Law Project. These advisors, called *resident liaisons*, typically remained in the host country for a period of one year. The role of these advisors was described in CEELI's grant agreement with USAID as:

"To coordinate all CEELI in-country assistance activities, to establish contact with host country organizations and individuals to evaluate and respond to requests in the host country for specific assistance and, on his/her own initiative and in conjunction with other CEELI-sponsored advisors, to identify potential assistance needs and make arrangements for responding to those needs."

CEELI's advisors have all been volunteers selected by the home office in Washington, D.C. The costs to USAID are limited to the administrative costs of the home office and to the stipends and travel expenses provided to the volunteers.

The demand for long-term resident advisors is greater in Bulgaria than in Lithuania or Poland. These differences in demand stem from differences in development, both in an economic and in an historic-cultural and political sense, and from different experiences with foreign advisors. Since the collapse of the Soviet Union, Poland has received an onslaught of foreign advisers and, thus, is more weary of technical assistance. Poland is also at a higher level of development and has a larger, better trained and more developed legal work force. Lithuania seems less receptive to foreign assistance not only because assistance has not been well coordinated and they perceive too much duplication, but in part also as a result of nationalistic preferences for what they call "less intrusive" forms of assistance, which usually translates to "give us the funding and we will decide how to use it." Bulgaria is at a relatively early stage of development and perceives a greater need for the day-to-day assistance that long-term advisors can provide. While Bulgaria has also received an onslaught of foreign advisors, persons interviewed in both the public and private sectors seemed less weary of foreign aid than people in Poland and Lithuania. To CEELI's credit, legal professionals in Sofia are also more open to long-term assistance in commercial law because its resident advisors have developed an effective rapport with the legal community and have opened doors for others to come.

Despite differences in the demand for long-term resident advisors, the function or role of such advisors is perceived in similar ways in all three countries. These advisors are valued as much for their substantive knowledge in any one area of law, as for their practical experience and managerial/organizational know-how. Beneficiaries in all three countries pointed to the importance of obtaining assistance in day-to-day decision-making and management. U.S. advisors are seen as individuals who can teach organizational and managerial skills, whether law-related (e.g., how to set up a law office, what to look for in a certain type of contract) or more broadly, organizational skills (e.g., how to make an effective presentation, how to organize a workshop).

To the extent that this was the established function and purpose of the long-term CEELI liaisons, some important contributions have been made. Nevertheless, the assessment found that these contributions were much more visible in Bulgaria than in Lithuania or Poland. The reasons for the greatest success in Bulgaria stem from a number of factors, among them the selection of senior, highly effective individual advisors for the first liaison missions, and the presence of a strong local counterpart organization which could be used as a platform for CEELI assistance. The factors that limited the contributions of CEELI advisors, particularly in Poland and Lithuania, and which need increased attention during the next phase are:

- **Advisor selection.** Recruiting senior legal professionals with international experience and the right personality traits is a difficult task, and few organizations have access to the pool of legal professionals that the American Bar Association has on its membership. The lack of consistent patterns of experience and qualifications among the resident advisors, however, may suggest that CEELI has not been able to fully utilize the resources of the ABA, and/or that the recruitment practices of the CEELI home office

need to be strengthened, and/or that the reliance on volunteers is less feasible for long-term overseas positions than for short-term missions because the pool of professionals with the required expertise and experience is more limited.

- Communication of project focus/objectives and functions/responsibilities of the advisors. Interviews with the CEELI advisors revealed that many have a limited understanding of the broader *developmental* objectives of USAID and/or about the specific objectives of their assistance. In fact, there was no common understanding among liaisons in the same country or between different countries about the specific objectives of the resident advisors. For the most part, it appeared that it was up to each individual to define his/her objectives. Some also felt that their functions and responsibilities were not clearly delineated, which made it harder to establish priorities. This approach has worked better when the advisor has been a very senior professional with significant work experience because he/she has been better able to set assistance priorities. CEELI has indicated that it is taking steps to address this and other issues described below.
- Duration and continuity of resident position. One year is a relatively short period for a resident advisor. According to most resident advisors it takes a minimum of 4-6 months to "get up to speed," leaving only a limited amount of time when they can operate effectively. This problem becomes more serious when there is little or no overlap among the resident advisors and each new individual has to "reinvent the wheel". Overall, there has been insufficient if any overlap among CEELI advisors in the target countries. Selection of advisors should be made well in advance and new advisors should overlap for a minimum of 2-3 weeks with the previous adviser in the host country.
- Extent of preparation of advisors. In some cases, advisors have been selected at the last minute and sent to the host country with little knowledge about the project's objectives, let alone the local context. The short orientation offered by the home office and the materials provided to the liaisons are not adequate to give the advisors the necessary information about the local context prior to their arrival in-country. The preparation process provides background, but lacks focused analysis and information of the immediate context of the project. It appears that USAID officials also are not spending sufficient time with the advisors prior to their departure, informing them about their activities, needs and objectives. Interviews with the Project officers at USAID consist more of courtesy visits than strategic, data-gathering and planning meetings.

2. In-Country Technical Advisors (short to medium-term)

All three IOs have provided short-term and/or medium-term technical advisors under the Commercial Law Project. IDLI, however, has only provided short-term assistance in governance, management, and financial control issues to strengthen the capacity of the advocacy grant recipients. CEELI and CLDP assistance, on the other hand, has been more commercial law-specific. For these reasons, IDLI assistance will be discussed in section 4, rather than in this section.

CEELI's short-term and medium-term assistance in-country has consisted of technical legal assistance workshops as well as placement of technical advisors in government organizations. Although CEELI has held numerous technical assistance workshops throughout the CEE region under its Rule of Law Project, very few (3) have been held in commercial law in the target countries. In Bulgaria, where 2 of the 3 workshops were held, they have been used to elaborate on and reinforce CEELI advisory papers or to provide a forum for experts to discuss specific issues arising during the law making process. They differ from training workshops sponsored by CEELI in that they were task specific and sought to provide high level advice on a particular topic rather than impart general knowledge as would be the case for a CEELI training workshop. The two workshops in Bulgaria, one on bankruptcy law and one on copyright law, were very well-received because they coincided with and supported discussions in Parliament about important draft legislation. The practical views of foreign bankruptcy specialists

early in the process were considered particularly valuable, and participants indicated that some of the suggestions made during the workshop were later incorporated into the draft laws.

In addition, CEELI has placed eight commercial law technical advisors in the target countries for periods ranging from two to six months. Only one advisor was placed in Poland and one in Bulgaria. The Polish advisor worked with the State Agency for Agricultural Lands between September of 1993 and March of 1994, while the advisor in Bulgaria assisted with judicial training from January to June of 1993. The bulk of the advisors, four, were placed in Lithuania between September of 1992 and August of 1993. Because CEELI relies primarily on its resident advisors to identify needs and request technical advisors, the heavy assistance in Lithuania relative to the other countries had more to do with the individual who was resident liaison in Vilnius than with real differences in needs or demands in the host countries.

Overall, CEELI's technical assistance has been well-received and has involved individuals with outstanding credentials and considerable commercial law experience, although few had significant experience working in an international environment. CEELI advisors in Lithuania were described as "the best advisors that we ever had," and there is concrete evidence of the impact of some assistance. Recruitment of such experienced professionals on a voluntary basis demonstrates the value of CEELI access to the resources of the ABA. Nonetheless, some areas that lessened the effectiveness of this type of assistance and that need to be addressed in the future are:

- Inadequate needs assessment. In Lithuania, which has received two-thirds of the technical advisors, some beneficiaries expressed concern that the choice of specialists and assistance reflected the perceived needs of the resident liaison more than those of the Lithuanians.
- Lack of preparation of the recipient. This issue is related to the former. If needs are clearly identified by local counterparts in collaboration with foreign advisors, adequate preparation by the recipient will be more likely. This was done well in Poland, where recipient, liaison, and specialist had lengthy discussions defining the mission.
- Broad focus/definition of assistance objectives and parameters. Technical assistance has covered a broad range of topics and, in some cases, the parameters of the assistance have not been clearly established. In Poland, for example, the project with the State Agency seems to have been developed around the skills and interests of the advisor, rather than vice-versa. CEELI identified through its liaison a need in agricultural land reform. The initial concept was to provide assistance in alternative dispute resolution for working out leases for this land. However, in the process of discussions between the technical advisor, the resident liaison, and the recipient, it became clear that the advisor was far more interested in residential real estate and that the recipient region, Poznan, suffered from a severe housing shortage. Assistance was then provided to convert some agricultural land into residential housing. While this assistance was very well received, it did not build on other activities or fit into the focus and objectives of USAID's Commercial Law Project.

CLDP has placed three medium-term advisors, one in Poland and two in Lithuania. At the request of USAID, no advisors were placed in Bulgaria. In Lithuania, the advisors supported privatization law and foreign investment law consultations, while in Poland the advisor has focused on procurement. The assessment team could obtain information only about the advisor in Poland. By all accounts, that advisor has been extremely effective, and is credited by Warsaw officials with making significant contributions to the draft procurement legislation. Three main factors have influenced her success: (1) the unique capabilities of the advisor, including expertise in the area of assistance, seniority, considerable government/public policy experience, and outstanding work habits (high energy, flexibility, and commitment); (2) advanced preparation; and (3) clear understanding of the purpose and objectives of the assistance.

3. Short-term Specialists (out-of-country)

Under the Commercial Law Project, CEELI has also provided short-term technical assistance through its concept papers and commentaries on draft legislation. This mode of assistance did not involve travel to the host country. Rather, CEELI made available specialists, primarily from the U.S. private bar, who from their home base wrote concept papers or commentaries about draft commercial legislation in the host country. Like other forms of CEELI assistance, the cost to USAID of concept papers and draft commentaries was highly leveraged (average out-of-pocket costs according to CEELI are \$1,000 per paper, excluding home office support costs) because CEELI relied on volunteers.

The original idea behind this type of assistance was to provide, as indicated in CEELI's grant agreement with USAID, "emergency response legal assistance." Accordingly, considerable emphasis was placed initially on the time frame for responding to assistance requests. Local organizations and agencies made requests for assistance often only six to ten weeks before a lawmaking body was to introduce a bill. As a result, there was little time for preparation or ground-work by the specialists, and advice generally was not tailored to the local context. This situation, however, has begun to change. According to CEELI, except in emergency situations, it now requires more lead time for preparation of papers and commentaries. In addition, the resident liaisons who channel the requests to CEELI must provide more background information and consider more carefully the value of the paper or commentary to the legislative process.

The role of the concept papers and draft commentaries has also evolved. Initially, advisory papers and commentaries were seen as a way "to get a foot in the door." Thus, they were a means as well as an end. While CEELI aimed to convey basic and useful information, the assistance also served as a means to help CEELI establish a presence in the host country and build relationships with law-makers. This mode of assistance now has a role much like that of the technical legal assistance workshops, and thus seeks to provide information to law makers at critical points in time. In fact, the technical legal assistance workshop may be seen as a supplement or follow-on to the written papers. The intention is for the same specialists who write the papers to participate in the workshops.

The effectiveness of this type of assistance has been limited by two principal factors, which CEELI is already addressing. These factors are:

- Inadequate contextualization. A major criticism of the early concept papers and draft commentaries is that they provided good explanations of the U.S. perspective, but failed to relate issues to the local context. Thus, they were seen as too abstract.
- Too much reliance on U.S. specialists. The usefulness of this mode of technical assistance was also lessened by the heavy reliance on U.S. advisors. These advisors not only had little if any knowledge of the local country context, but also failed to draw comparisons with legal systems, such as the European, that were much more relevant to the local lawmakers. CEELI is addressing this issue including Europeans on the advisory teams.

Based on interviews conducted by the assessment team, the demand for this type of assistance is lower than for other types of assistance, although it varied from country to country. The low demand may arise from the perception that these papers are too abstract for the reasons discussed above. However, there also seems to be some relationship to the level of development of the target country. In Bulgaria, the CEELI advisory papers and commentaries were perceived to be quite useful. The concept paper on securities law, for example, was widely read among Bulgarian lawmakers and is credited with promoting increased discussion of draft legislation. Many law makers noted that the paper gave them an understanding of critical, basic issues involved in securities regulation, and that the timeliness of the assistance made it of real use to the legislators. Likewise, CEELI's commentary of the draft Bulgarian bankruptcy legislation was seen as extremely useful. Some felt, in fact, that the CEELI paper had

played a critical corrective function because it pinpointed key areas that helped lawmakers realize the unacceptability of the draft law that was about to be considered by Parliament.

While the higher perceived value of this mode of assistance in Bulgaria may have resulted because written papers were paired with technical legal assistance workshops, several Bulgarian lawmakers and private lawyers indicated that they found comparisons with the U.S. legal system very valuable. In contrast to the Poles, and to a lesser extent the Lithuanians, very few Bulgarians were willing to dismiss comparisons with the U.S. legal system as largely irrelevant. This situation may suggest that this mode of assistance may be more effective in countries like Bulgaria, where legal professionals are not as sophisticated and well trained on commercial law and advisor fatigue has not yet developed.

4. Institution-Building Grants

The USAID grant agreements with CEELI and IDLI authorized these organizations to provide "advocacy" grants of up to US\$20,000 per organization annually to support the establishment and development of local non-governmental organizations (NGOs) involved in commercial law reform and information dissemination and discussion. Although the specific objectives of this mode of assistance were not listed, the grant agreements called for a combination of financial support and technical assistance to build the capacity of indigenous NGOs to become self-sustaining organizations. The technical assistance component has consisted of day-to-day support by CEELI's resident advisors and periodic, short-term (3-5 day) missions by IDLI to assist primarily with governance, management and financial control issues. In addition, although CLDP was not authorized to provide advocacy grants and technical assistance in this area, it has supported the development of local legal NGOs in a number of important ways, including support for legal translation, donation of legal textbooks and research materials, and support for training of legal professionals in the United States.

The organizations supported in each target country and that have come to be known as Commercial Law Centers ("CLCs"), differ significantly in nature, role and stage of development. In Bulgaria, CEELI and IDLI have collaborated in supporting the Center for the Study of Democracy (CSD), an emerging public policy think tank with programs and objectives that extend beyond commercial law. The CSD is the most developed of the CLCs in the target countries and the only one with an agenda that resembles "public advocacy." The CSD has received two \$20,000 grants from CEELI, one \$20,000 from IDLI, and \$10,000 dollars worth of commercial law textbooks from CLDP. The CSD, which sponsors research and workshops on law and economics topics, aims to become an influential policy reform advocate in Bulgaria. The CSD already plays an important role as a forum for discussion of legal reform topics and senior policy makers turn to the CSD for information and advice on commercial legislation, although it is unclear whether the CSD's resources, or the CEELI liaisons and network, are the real attraction. To date, the CSD has also been quite successful in diversifying its sources of funds. Along with USAID, its funding sources include a broad range of U.S. and European foundations and corporations, as well as international lending agencies. The chief concern in that regard is whether the funding may be growing faster than the capacity of the CSD to absorb and use the resources productively. Likewise, the legal program lacks experienced senior staff.

The assistance provided by CEELI advisors and IDLI has been invaluable to the CSD. CEELI advisors are helping the CSD on a daily basis with organizational issues such as developing a business plan and helping establish the law library. CEELI advisors have also been instrumental in helping the CSD achieve a reputation as a source of information and expertise in commercial law. Because the CSD's own staff has limited experience in this area, CEELI has made available technical specialists or advisors who can comment on and assist with development of commercial law. The assistance provided by IDLI has also been critical in strengthening the capacity of the CSD to attract additional funding. The three five-day technical assistance missions by IDLI's controller helped the CSD refine its financial management systems and prepare for an audit. The "clean" audit received by the CSD will enhance its ability to attract additional funding.

In Lithuania, CEELI and IDLI cooperated in establishing a Commercial Law Center in Vilnius. The CLC was established by a former CEELI resident advisor together with an influential Lithuanian lawyer, and is still in the

early phases of development. The functions of the CLC are limited primarily to those of a clearinghouse for legal information. It is setting up a commercial law library and, with support from CEELI and IDLI, will continue to sponsor legal workshops and seminars. The CLC has become a source of expertise in legal translation.

The grants from CEELI (\$30,000) and IDLI (\$20,000) are currently the only sources of outside funding of the CLC, although the local counterpart has been able to obtain valuable local, in-kind support, such as free office space. The CLC is also in the process of developing a plan to diversify its funding sources. In addition, the CLC received a donation from CLDP of \$10,000 worth of legal textbooks and reference books, and has been assisted by CEELI and IDLI advisors. One concern is the role of the CEELI resident advisors, as CLC staff reportedly must spend 50% of their time supporting CEELI activities, and the perception is that the CLC is CEELI's center rather than a local organization run by local people.

In Poland, the situation is more complex because existing legal NGOs are more numerous and rivalries among these organizations have made selection of an NGO more difficult. CEELI and IDLI have worked independently: IDLI has supported the Polish Lawyers Association in Warsaw with a \$20,000 grant and technical assistance, and also has given the Institute of Inventiveness of the Jagellonian University in Krakow a \$5,000 grant to support its research efforts. The former is a broad-based association of lawyers, while the latter is a technocratic, research organization with a solid reputation as only one of two centers of excellence on intellectual property in Europe. On the other hand, CEELI is supporting a new foundation in Warsaw that is comprised of the Warsaw chapters of three rival organizations: the Polish Lawyers Association; the Chamber of Legal Advisors; and the Polish Bar Association. CEELI's plans to support a consortium in Krakow that included the Institute of Inventiveness was aborted earlier this year as a result of a decision by USAID's Project officers to limit CEELI support to only one CLC in Poland, rather than two.

The impact of IDLI support to the Polish Lawyers Association has been twofold. On the one hand, IDLI has assisted the association in developing a training program that will provide a source of revenues to the organization. (Members of the association have indicated that they have already purchased 15 computers with revenue earned from IDLI-supported training seminars.) On the other hand, IDLI has helped to strengthen the financial accounting and management capabilities of the organization although additional missions by IDLI staff are needed to strengthen this capacity.

Because the CLC supported by CEELI in Warsaw was just recently established, it is too early to comment on the functions of the organization or to assess the impact of CEELI assistance. Nonetheless, in the near future, the main functions of the CLC will be limited to developing the legal library and sponsoring workshops and seminars on international legal topics. As for the impact of CEELI assistance, many view the coordination of the three rival Polish associations as a significant accomplishment.

Two concerns shared by many regarding the CEELI-supported CLC in Warsaw center on: (1) the sustainability of the CLC in light of deeply-rooted rivalries among the associations; and (2) the need to support an organization with a separate training program given that each member organization already has and will continue to have its own legal training programs. On the former issue, there are many skeptics who think the organizations came together only for the funding and that the new relationship is not sustainable, especially in the absence of CEELI. On the latter issue, many see potential overlap and duplication of efforts as well as increased rivalries over the struggle for revenues from the training programs and over the location of the library, which for now is housed in the offices of the Polish Bar Association.

Four issues that require attention in the next phase of the Commercial Law Project:

- Understanding of purpose and objectives of advocacy grants. A fundamental problem to date of this type of assistance has been the lack of clear, specific, and common objectives and purposes of the grants among the donor, the providers, and the recipients. The term "advocacy grants" suggests that an objective might have been to develop public interest organizations that could advocate and mobilize support for law

reform. However, this definition is neither shared by the various parties involved, nor is the more narrow objective of creating centers for continuing legal education. In fact, if the latter was a key objective, one wonders why law schools were not considered for this mode of assistance. In the future, USAID and the IOs must develop a shared vision of the goals and objectives of this Project component. This would permit development of clear selection criteria and open discussions with potential recipients about the exact nature and purpose of the assistance as well as the role of the donor and providers.

- **Selection of organizations.** Selection of recipient organizations is clearly related also to the earlier issue. To the extent that objectives are unclear, selection criteria may also be inappropriate. As for the process of selection, the experience to date in all three countries has demonstrated that legal associations are often tied to various political interests which may or may not turn out to be the partners of choice for the IOs or USAID. Thus, selection of recipients must involve experienced individuals with significant knowledge of the local context and the various political forces and coalitions. It should not, however, be left solely to individual advisors; rather, it should involve senior home office personnel as well.
- **Funding levels and role of USAID.** The team was informed that one of the reasons why the grants were set at such relatively low levels (\$20,000 per year, per organization) was that it would enable USAID to transfer monitoring responsibility to the IOs, leaving USAID free of the burdens of auditing and monitoring the grants. Yet the perception of some IOs and of the assessment team is that USAID Project officers have tried to micro-manage the grants. Perceived interference by USAID, on the one hand, has strained relationships with local counterparts and jeopardized the delicate relationships between the providers and the grantees. Second, attempts by USAID to control the grants have led to decisions, such as aborting the CLC in Krakow, which had not been fully vetted. As for the level of funding, it seems too low if USAID and the IOs are serious about institution-building, especially if USAID will insist on significant monitoring. The costs of conducting an audit, for example, would be many times more than the value of the grants.
- **Role of local counterparts.** For the CLCs to become sustainable organizations, a local champion or champions must be found to develop these organizations. The day-to-day assistance of the resident advisors has been and will continue to be very useful in the near future. This assistance, however, also has a cost for the local organization in the form of time spent assisting CEELI advisors or CEELI activities. Thus, demands for staff time and other contributions by the local organization must be carefully weighed in cost/benefit terms to the local organization. Also, CEELI must be careful not to give the impression that these organizations are CEELI centers, rather than indigenous organizations supported by CEELI and other donors.

C. Indicators of Performance

The effectiveness and impact of the technical assistance provided under the Commercial Law Project has been influenced by the many factors discussed in the previous section. For some activities, like the advocacy grants, it is much too early to talk about impact, much less draw conclusions about the sustainability of the CLCs. For others, like the short-term or medium-term technical assistance, it is possible to identify some positive indicators of development impact, though, as with training, these are more qualitative than quantitative. The impact of the long-term assistance was much more difficult to gauge, in part, because of the broad or undefined objectives of the resident advisor position, and because of lack of documentation and follow-up. Moreover, as mentioned earlier, because the impact of technical assistance has been more visible in Bulgaria, more of the report will be devoted to it. Nonetheless, efforts have been made to identify impact of all modes of assistance and in all countries. The following list, however, is intended to be more illustrative than comprehensive.

Long-term and short-term technical assistance, coupled with financial support, has strengthened the capacity of local organizations to promote commercial law reform. All interviews indicated that assistance to the CSD in Bulgaria has strengthened its capabilities to support law reform. Proof of this is that the CSD, in conjunction with

CEELI, now receives requests for assistance, such as commentary on draft legislation, from numerous policy-making bodies, including Parliament, the Ministry of Trade, the Council of Ministers, the Ministry of Finance, and the Ministry of Justice.

Concept papers, commentaries, and technical legal assistance workshops have increased discussion of commercial law issues. The concept paper on securities law in Bulgaria was widely discussed among policy makers. A representative of a rival organization also noted that it had led to heated discussions within their organization. The commentaries and workshops on bankruptcy and copyright contributed to discussions in Parliament of the corresponding draft laws.

Short-term technical assistance and advocacy grants have helped indigenous organizations become more sustainable. The IDLI grant to the Polish Lawyers Association is being used to generate revenues through the sponsorship of IDLI supported training programs which will increase the likelihood of sustainability of the organization. In Bulgaria, the IDLI assistance provided critical help to the CSD in preparation for an audit which will enhance the ability of the organization to diversify its funding sources.

Short-term and medium-term legal specialist advisers accomplished role transfer and capacity building. Local staff of recipient institutions are better able to address commercial law issues at both the policy and operational levels. In Poland the assistance provided by CLDP's procurement advisor has helped staff develop presentation and analytical skills which they have used in discussing revisions of the procurement law, and staff are also developing their own trainers to prepare for the implementation phase. In Lithuania, the assistance provided by CEELI to the State Debt Management Division of the Ministry of Finance improved the capacity of local staff to understand and use new types of clauses in its financial agreements. CEELI assistance in Lithuania also resulted in the creation of an inter-agency working group on bankruptcy issues.

Medium-term technical assistance contributed to development of more efficient and transparent procedures. CEELI's assistance to the Ministry of Finance in Lithuania resulted in a draft resolution on prospective G-24 loans to avoid preliminary presentation of each loan to Parliament separately. Parliament passed the resolution, thereby improving the efficiency of the process. IDLI's technical assistance has helped create more transparent financial accounting systems at the CSD in Bulgaria.

Technical comments by specialists of draft legislation were adopted. Comments by CEELI advisors on amendments to the bankruptcy lien laws in Lithuania were adopted and incorporated into the draft law approved by the inter-ministerial review process and presented to Parliament. Likewise, CLDP's procurement advisor in Poland played a major role in the preparation of the Polish public procurement law, which was being actively debated by the parliament at the time of the assessment team's visit.

Demand for technical assistance has increased as a consequence of positive experience with technical assistance providers. All CLCs indicated an increased interest in receiving technical assistance from IDLI on financial management and organizational development. In Poland, procurement advisors have requested an extension of CLDP's technical advisor. The CLCs in Lithuania, Bulgaria and Poland requested continued support by CEELI's resident advisors, although Lithuania and Bulgaria prefer one to two advisors.

Technical legal assistance workshops have resulted in coverage by national media and increased awareness of commercial law topics. CEELI's copyright workshop increased attention on this topic and contributed to coverage of the development of the copyright law by the television news program Panorama, which reportedly is one of the most widely viewed programs in Bulgaria.

Grants and book donations to the CLCs have increased the availability of legal information. In Bulgaria and Lithuania, the libraries established in the CLCs have made available legal information that was not previously accessible to local lawyers, and several individuals indicated that they use the resources of the CLCs.

CHAPTER 3: CONCLUSIONS AND IMPLICATIONS FOR FUTURE

I. Summary

This chapter discusses the implications for USAID of future assistance to commercial law development in the CEE region. The recommendations for consideration by USAID in the design of future assistance activities draw both from the lessons gained during our assessment of the Commercial Law Project and from the extensive experience of prominent members of the team in law and economic development in the CEE and other regions of the world. The chapter discusses issues that should be considered by USAID in assisting commercial law development and presents models and similar guidance for use in selecting and structuring technical assistance and training in commercial law topics.

In addition to the specific lessons identified in previous chapters of the report, future interventions by USAID in support of commercial law reform in Eastern Europe will also need to consider the following broad issues:

(a) Shift in emphasis of assistance

During the first phase of the Project, much of the assistance provided involved support for the initial, drafting phase of law development. Law implementation received relatively less emphasis, while support for law enforcement was virtually absent. The next phase will require a shift in emphasis to implementation and enforcement. The need for drafting services will not disappear entirely; even Poland, which is further along in developing commercial law, continues to make significant changes to basic financial laws, for example. The initial rush to draft basic laws has abated, however, now that many laws are in place in many of the CEE countries. Moreover, our review has indicated that U.S. assistance providers have a comparative strength in implementation-related activities, but are less well-suited to assist in drafting laws. This is an area in which European donors have been heavily involved and in which European specialists have an advantage. USAID projects will have to address implementation and enforcement much more in the future than they have in the past.

(b) Importance of Donor Coordination

Conflict, competition, and overlap among the aid providers is a serious problem in much of the CEE region. USAID funded law projects are carried out in parallel with similar activities funded by the World Bank, the European Union, or bilateral donors including Germany, the United Kingdom, France, and Scandinavian countries. The problem is not mere duplication of effort. When different donors fund competing groups, the efforts tend to cancel out or at least delay constructive results. Despite the barriers to cooperation, every effort should be made to coordinate activities. Law projects make cooperation particularly important because the models for much Eastern European law come from Europe, whose legal systems differ significantly from the United States system. During

the first phase of the Commercial Law Project, coordination was left largely in the hands of the IO's. We recommend that responsibility for donor coordination should ultimately rest with USAID.

(c) Time Horizon of Assistance

Determining the appropriate duration of a project is a difficult issue for all categories of assistance. Developing laws takes time, often years or even decades. The time horizon of many donor assisted law projects is often short. Most of the assistance activities reviewed under the Commercial Law Project were of short duration - the majority of training assistance was provided in assignments of less than two weeks. The long-term technical advisors were in-country for one year or less. Institution-building grants were allotted one year at a time. The Project itself was only three years in duration, and after allowing for start-up, the time available for implementation was reduced considerably. This short view introduces an unrealistic element to the measurement of output. Rather than attempting to force assistance to all aspects of law development into a project of short duration, an option we recommend is to design activities or projects in sequential models, such as developing a cycle of long-range training activities.

(d) Law Development is both a Technical and Political Process

It is important for aid agencies engaged in law development to recognize that it is not merely a technical exercise. Enacting, implementing, and enforcing laws is fundamentally a political process. As a result, foreign agencies assisting in that process can become deeply involved in domestic political issues and conflicts. This fact has several implications. First, the aid agency and the implementing organization should choose carefully the persons and organizations they seek to help. Second, advocating a "technically correct position" will inevitably be seen by certain quarters as taking part in a political fight. Third, the failure or long delay in passing a law may be no reflection on the technical correctness or competency of the assistance offered; rather, it is a reflection of the political situation in a given country.

II. Options/Models for Intervention

No single formula or "model" for assistance in support of legal development exists. Each mode of intervention must be carefully tailored to suit the particular needs and goals of commercial law reform in a specific country or region. Drawing on the experience of the Commercial Law Project as well as law development efforts in other parts of the world, this section of the report will set out the principal options or "models" for assistance and suggest the situation in which they are likely to be most effective.

We talk about "models" in the sense that we identify elements of proved effectiveness and flag elements to avoid. About each advisory service, for example, we can identify appropriate lengths of service, function, and qualifications for advisors. The models offer useful guidance, if carefully used. Each assistance vehicle must be designed to accomplish a substantive strategy and a specific set of goals.

A. Training Models

Any attempt at commercial law reform in the CEE will entail significant training. Experience has shown repeatedly achieving legal reform is not a matter of putting law in the statute books but rather of putting law in people's heads - particularly the heads of legal professionals: lawyers, judges, government officials, and law teachers. Whether assistance focuses on lawmaking, law implementation, or law enforcement, training must accompany each phase in order to make commercial law development a reality.

At the outset, it is essential for any program of assistance to formulate a long-range, integrated plan for training over the next cycle of grants for the CEE region. The first cycle of USAID assistance to CEE had no such plan, but has provided valuable information. In the next cycle we strongly recommend that, once USAID has determined appropriate law development goals, it establish a long-term training program to accomplish those goals. For

example, if USAID's strategy is to improve law supporting financial markets, it should also make a plan on the training necessary to support that strategy over a two or three-year period. Such an approach will focus training efforts and resources and thereby increase impact and efficiency. In designing training for the CEE, assistance agencies should engage in a two-step process. First, in order to conceptualize the nature of the training needed, it is necessary to identify and clearly state the following:

- Training goals;
- Training beneficiaries; and
- Local legal environment.

Having established these parameters, the agency can then *design* the appropriate training. Training should be designed with adequate attention to the following basic factors:

- Training vehicles or modes;
- Location ;
- Duration;
- Pedagogical method;
- Content; and
- Training providers.

These factors is discussed below.

1. Training Goals

The precise goals of a training effort must be linked to the goals and needs of the specific commercial law development program undertaken in a particular country. Basically, a training effort can have one or more of three fundamental goals: to improve (1) awareness, (2) knowledge, or (3) skills. The boundaries between these three goals are not rigid or fixed. A training project may incorporate one or more of them.

(a) Awareness Training. The purpose of a program of awareness training, which is almost always of short duration, is to make legal professionals and sometimes the public aware of certain legal issues, problems or needs. For example, in connection with making a new bankruptcy law, the relevant ministry might organize a conference of lawyers, judges and government officials in order to determine the need for new legislation and the special problems to be faced by bankruptcy in the country concerned.

(b) Knowledge Training. The goal of knowledge training is to give the recipients significant knowledge of particular areas of the law so they might understand and use it in their work. As part of the implementation process of any new major law, development agencies must provide for an appropriate program of knowledge training. For example, a series of training programs for lawyers and judges will have to accompany any new bankruptcy law.

(c) Skills Training. Skills training, which usually presupposes or includes substantial knowledge training, seeks to give recipients the ability to use knowledge to accomplish specific tasks such as drafting contracts, managing

law offices, negotiating loans agreements, or managing court dockets. Skills training requires a special methodology, is interactive in nature, and is often based on the notion of "learning by doing" so that participants in a training program actually have the opportunity to practice the skills that they are seeking to acquire. As a result, skills training is usually limited to a relatively small number of participants at one time, unlike awareness or knowledge training which can be delivered to large groups fairly effectively. Moreover, the cost per participant of skills training is usually higher than in training programs having either of the other two goals. Nevertheless, throughout Eastern Europe the assessment team found that the overwhelming demand from lawyers was for skills training. Indeed, some even expressed the view that ordinary knowledge training of the type presented in many continuing education programs - particularly if that knowledge is limited to American law, was of little interest and no use to them. Thus, USAID can expect that to meet the needs of commercial law development in Eastern Europe its assistance will have to include a heavy component of skills training.

2. Sequencing

A training program must often pursue these goals in a definite sequence. For example, if a law-development strategy calls for a new securities law, the lawmaking phase might begin with awareness training to make lawyers, judges and government officials sensitive to the need for securities legislation. Next, it would provide knowledge training on the intricacies of securities legislation to persons charged with preparing the new legislation. Once securities legislation is enacted, the law implementation phase might begin with awareness training on the basic features of the securities law for the bar judiciary and securities industry. Subsequently, training would focus on substantive, detailed knowledge of the contents of the legislation. Eventually, training might focus on conveying skills in structuring and executing securities transactions.

3. Beneficiaries

Any training effort associated with commercial law reform must carefully determine the potential beneficiaries who, through training, will most allow the reform to take place. A decision on this question requires an understanding of the legal system in a given country and of the various roles played by legal professionals who make that system function. In most cases, there will be four target groups of recipients: private lawyers, judges, government officials, and legal academics. Each group has its own culture, priorities, and roles.

Here too, planners should consider the sequencing of training efforts. For example, training a law professor will probably not be important in the lawmaking stage but may assume increased importance in the implementation phase. In addition, planners should seek to understand the motivation (or lack thereof) of the various groups toward seeking training. The success of a particular training effort may depend on the planners' ability to fashion appropriate incentives to secure active participation of key groups in training projects. Finally, training goals may vary from group to group. Skills training may be important for private practitioners and government officials, but less significant for judges and law professors. Table 4 below illustrates possible combinations of training goals and beneficiaries.

Potential Beneficiaries	Potential Goals		
	Awareness	Knowledge	Skills
Private Lawyers			
Govt. Officials			
Judges			
Academics			

4. Local Legal Environment

The design of any training program requires an understanding of the local legal environment. That understanding will influence training goals, recipients and content. The various countries of Eastern Europe differ greatly in levels of legal development and sophistication and sources of legal influence. A training program that is helpful in Bulgaria may be totally inappropriate for Poland. The assessment team found that the most effective training programs in the first phase of the Commercial Law Project were those that linked their content to the local context. Providers cannot localize training without a thorough knowledge of the local legal environment. It will not only be necessary to know the laws, but also to know the people who influence the way the local legal system functions.

5. Training Vehicles

Available training vehicles for reaching desired goals are numerous. Here, we review them and indicate the tasks and environments for which they are best suited.

(a) Conferences. Conferences bring together various legal professionals for an exchange of views on a particular legal issue. In most cases, the goal of the conference is to improve awareness or knowledge. Conferences are useful on a regional basis to enable legal professionals from various countries facing similar developmental challenges to come together to share and compare experiences in commercial law development.

(b) Seminars and Workshops. The traditional way of providing continuing education to legal professionals is through seminars and workshops, usually lasting between one day and a week. Most of the training accomplished under the first phase of the Commercial Law Project used this vehicle. It will no doubt continue to be heavily employed in the next phase as well. Despite the frequency of its use, this vehicle has an inherent limitation due to its short duration. In order to transfer certain types of complex skills and knowledge, for example, the law of securities regulation, development agencies may have to seek other types of training vehicles.

(c) Specialized Training Courses. In order to provide in-depth training on important or complicated subjects, assistance agencies, often in cooperation with established institutes or schools, may wish to support specialized training courses which usually last longer than one week and demand more of participants in terms of preparation and participation than does the ordinary seminar or workshop. An example of a specialized training program is the twelve-week Development Lawyers course offered periodically in Rome by IDLI. The advantage of such training courses is that they allow for thorough knowledge and skills training because of their duration and intensity.

(d) Academic Study. It is through academic study at universities that all legal professionals receive their initial training. All the CEE countries have university law faculties, and they will be the basic training ground for all legal professionals in the future. Consequently, any strategy concerned with commercial law development in the long term must consider the role that university law faculties can and should play.

Law development programs in other parts of the world have sought to assist law schools by funding libraries, visiting professors from abroad, and scholarships to enable law graduates who wish to become teachers to study abroad. While these efforts may eventually have some beneficial impact on the countries concerned, university law faculties are generally not useful vehicles for making immediate changes in the level of legal training of existing legal professionals. Law faculties are usually slow to change their curricula, and they often have relatively little contact with the day-to-day practice of law or the workings of the courts. Consequently, efforts to strengthen and improve law teaching must be viewed as a long-term and important means to improve legal knowledge (but usually not skills), but of little help in the short term.

(e) Internships. One of the more effective vehicles for skills training is the internship, whereby the person to be trained is placed in a work situation under the supervision of a mentor. Two such internship programs were

carried out under the Commercial Law Project -- one for law professors and the other for practicing lawyers. The programs are expensive and require careful selection and preparation of mentors, recipients, and the work situation into which interns will be placed. The judicious use of internships could be very helpful in the next phase of the Project. In particular, because of the comparative advantage which the United States has in the area of the practice and teaching of commercial law, appropriate internships in the United States should continue to be pursued in the next phase of the Project. In addition to the preparation indicated above, key success factors for internships include the language competency of the intern, the time the mentor is willing to commit to the intern, the personal relationship developed between intern and mentor, and the maintenance of contact between the two once the internship has ended.

(f) Study Trips. Selected study trips to visit foreign institutions relevant to commercial law reform may also be useful in connection with commercial law development. For example, visits to company registries in connection with company law reform or visits to stock exchanges in connection with capital markets legislation may prove to be helpful as a vehicle for training key individuals in the host country. In designing study trips, key factors for success include: (1) the relevance of the places visited to the work of the visitor; (2) the comprehension and clarity of the explanation accompanying the visit; and (3) the opportunity for the visitor to have continuing contact afterwards with persons visited.

6. Location

Providers of training need to consider the question of location. As noted earlier, training located in a particular agency or ministry may not be effective because participants working there are periodically drawn away from training sessions to their offices. The first phase of the Commercial Law Project tended to hold most training in the capital cities of Eastern Europe. One challenge of the next phase will be to find ways to bring training to the outlying areas as well. Providers should also consider regional training programs in which participants concerned with similar problems in the region, such as bankruptcy and corporate reorganization, are brought together for training. The interaction of participants from differing countries can enrich the training experience. And finally, on occasion, training in the United States or Europe may be appropriate because it is easier to access resources and engage them in training activities in the United States.

7. Duration

The duration of a particular training program will be influenced by a variety of factors and forces which the provider must seek to balance. These include the nature of the subject matter and training goal, the availability of desired recipients, the extent of financial resources, and the availability of the desired trainers. For example, private lawyers, concerned about loss of income while away from their offices, may be less willing to attend long training programs than government lawyers and judges whose salaries continue to be paid during the training.

8. Pedagogical Method

Providers of training must give careful thought to the teaching methodology to be applied and must relate it skillfully to the training goals to be pursued. Straight lectures may be appropriate for basic knowledge training, but they are generally ineffective in teaching skills. Mentors in internship programs must develop a training plan for interns under their supervision. The use of foreign language translation in a training program will influence pedagogical method. For example, it is difficult to use the case method or Socratic technique where instructors and recipients do not speak the same language.

9. Content

Content must be carefully focused to achieve training goals. Mere presentation of American law is not likely to be helpful. Indeed, because of the legal traditions prevailing in Eastern Europe, other European legal models may be more relevant than U.S. law in many areas. Consequently, USAID and its implementing organizations must

consider the extent to which European law and practice should be included in training programs. Every effort must be made to localize and contextualize the material taught, a task which will require training providers to undertake research on local legal issues before offering the training program. They should also recognize that course materials will not only serve as teaching tools during the program but also as reference materials for the participants thereafter because of the general paucity of relevant legal literature in most Eastern Europe. Among the topics which were most frequently mentioned by informants as areas for training were the following: business negotiations, bankruptcy law, alternative dispute resolution, banking law and practice, corporate reorganization, and financial transactions.

Finally, because many important areas of training involve non-legal issues, training providers must consider the extent to which they should include non-legal topics, such as economics and finance, in training programs. If USAID adopts a strategy that focuses on critical economic areas, then such material will have to be included.

10. Providers

The selection of the appropriate training provider will depend on many of the variables indicated above. While development agencies tend to look to their own nationals to provide training, every effort should be made to include local experts and trainers in programs. They are best able to relate abstract concepts and principles to local problems and issues. Moreover, they are usually more knowledgeable about the European legal tradition than are American lawyers and professors. Indeed in certain cases, European providers may be more suitable to Eastern Europe's needs than are U.S. institutions. Development agencies should also seek to institutionalize training in local organizations and such institutionalization should form part of any long-term training plan. Training is a vital on-going process in any legal system and must continue long after foreign assistance agencies have left the region.

B. Technical Assistance Models

Technical assistance providers confront profound skepticism in Eastern Europe where many believe that the costs have been high and the benefits low. On the cost side is the possibility that the technical advisor will demand too much of the recipient's time for translation, training in local conditions, and guidance through the thicket of local players. Inadequate benefits stem from too much advice of low quality or inappropriate to the situation. Advisors have been insensitive to local political conditions and delivery has been slow. Overall, the slow economic progress since the late 1980s raises doubts about the value of foreign advice, which has been plentiful. Many users have been burned.

The potential local user will perform a cost/benefit analysis which the aid supplier must address. Even the minimally skeptical recipient faces such a severe shortage of skilled manpower that most government agencies must weigh the demands on their employees' time against any advisory help. The supplier must reduce the costs as much as possible and identify, then deliver, the benefits. The local perception of the relative benefits is as important as the reality. Aid providers must address both.

The purpose of assignments over the next few years will shift in emphasis. Generalists who act as advisors will yield to specialists as the host's law development needs become more particular and the aid donor's strategy more focused. The past emphasis on legislative drafting will shift to implementation and enforcement as the need for drafting services declines.

1. Goals of Technical Assistance

Technical assistance to promote a market-oriented legal system aims to improve rules, skills, systems, or institutions associated with law. Any project may encompass one or more of these goals. The goals vary

depending on the phase of law development: law-making, implementation, or enforcement. Table 5 lays this out in a framework, explained in the following paragraphs.

Table 5: Options for Technical Assistance			
Assistance Goals	Law Development Phase		
	Law-Making	Implementation	Enforcement
Rules			
Skills			
Systems			
Institutions			

(a) Technical assistance to develop rules. The most prominent form of technical assistance in Eastern Europe since the late 1980s has been to help countries write laws. The immediate need is obvious: existing laws were inappropriate and new laws were essential. The purpose of this technical assistance is to provide the rules that will support markets. The assistance both supplies a form for the rules to take and suggests the appropriate content of the rules. Much U.S. assistance focuses more on the content because the codes used in CEE countries call for a form that differs from our own.

In the law making phase, this assistance provides draft laws to local officials who write the legislation or comments on their drafts. In the implementation phase, regulations are offered to support laws in effect. For example, to implement a banking law one may provide, or comment on, prudential regulations that elaborate rules for the safety and soundness of the banking system. In the enforcement phase, standard rules and procedures are needed to help the judicial system to enforce laws in effect.

(b) Technical assistance to develop skills. Much technical assistance is knowledge or skills training. A consultant whose main job is to draft legislation devotes great effort to training the local counterparts who do the drafting. Many of the points in the section on training apply here.

For lawmaking, two different skills are needed: an understanding of the substance of the legislation and the ability to write laws. The audience is not only those who draft; senior policy makers, at the very least, must also be educated to the major substantive issues.

For implementation, the government officials who make the law work need to understand it and their role. A banking law requires bank supervisors to apply the prudential rules. Civil servants must be able to register mortgages or secured transactions. All must understand the law and the precise limits to their discretion.

For enforcement of commercial laws, a country needs a cadre of judges, arbitrators, and mediators who understand market economies and the specific policies of the laws. These people need skilled staff - an area largely ignored up to now.

(c) Technical assistance to develop systems. "Systems" refers to very specific processes associated with implementing law. For example, procedures to register interests in land or control a court's docket; computer-based programs to help supervisors analyze banks' balance sheets; financial systems to control the activities of agencies like a court or land registry; or data systems to inform the public about laws, rules, and decisions (such as gazettes or court reporters). Technical assistance to build systems must get to the accountable

officials. It must be carefully geared to the capacity of the government and country and must mesh with the system of laws.

(d) Technical assistance to develop institutions While the prior three goals build local capacity, technical assistance may be designed more specifically to develop discrete legal institutions, such as courts or bar associations. This form of assistance combines the rule making, knowledge and skills training, and systems assistance described above into a package with a common long-term goal to leave a viable organization. Institution building is the most ambitious goal of technical assistance.

For law making, technical assistance may create or expand the unit of parliamentary drafters in the cabinet office or justice ministry. For implementation, it may create the registry for mortgages or secured transactions. For enforcement, technical assistance may help develop special courts, such as commercial courts or bankruptcy courts.

In addition, local organizations whose mandate is to promote law development themselves could be active in all three phases.

2. Technical Assistance Vehicles

Several different technical assistance vehicles and combinations may be used to reach desired goals, including the following:

- Resident advisors for the medium or long-term;
- Specialist advisors who visit the country short-term;
- Advisory papers by specialists who do not visit the country;
- Local counterparts;
- Technical assistance workshops; and
- Support to local organizations.

The first three modes are grouped into the section on "Advisory Services," while the second three are grouped into "Local Capacity Development." Each of the listed vehicles has a training component and can be used alone or in combination with other vehicles.

3. Advisory Services

In providing advisory services, the following are key considerations:

(a) Duration. Under the Commercial Law Project, the longest an advisor was in-country was one year. In practice, the length is usually determined by the time the advisor is willing to spend abroad and the donor's willingness to bear the cost of moving families. This is significant because the aid provider reaps its biggest pay-off from long term advisors after they have lived in the country for at least one year and begun to understand it. When a longer tenure is needed to do a job but suitable advisors cannot be found, the aid provider could design the project for one mission of several months followed by short repeat missions by the same adviser. In the past, these have allowed the advisor to build a rapport with local counterparts, educated the adviser to the way the country works, and allowed contact when activity looms in the country.

(b) Advisors qualifications. A major issue concerns the use of generalists rather than specialists and the extent to which skills are needed for drafting, implementation, and enforcement. We expect specialists to predominate in the next phase. A critical economic activity strategy will require specialists in the relevant activity, such as bankruptcy or secured transactions. Because the basic laws in CEE are now mostly drafted, generalists are less needed, and implementation and enforcement require more specialist advice.

The shift from advice about drafting to implementation and enforcement calls for skills that differ somewhat from those required in the past. Drafting requires an advisor with knowledge of the substantive laws who can articulate policy choices and offer appropriate language; practicing lawyers, scholars, and government lawyers are qualified. Advice about implementation requires the ability to train public sector professionals and the public and the mastery of governmental systems to deliver required services. The advisor applies the legal principles embodied in the law to a variety of situations. These skills are more the province of government lawyers and some scholars than of practicing attorneys. Advisors about enforcement must be familiar with substantive law and the procedures to resolve disputes. To advise judges, for example, about the bankruptcy law requires substantive knowledge of the law. To advise them on how to manage a calendar of bankruptcy cases calls for familiarity with court management. Practitioners, scholars, and government attorneys will bring the first set of skills, but only a small group of specialists can advise on the second. In all cases, knowledge of code law systems as well as the American legal system is vital, given the audience.

(c) Language skills. In any situation, local language skills are to be preferred since much of the art of law lies in the precise use of language. The question is whether an advisor can be useful without language skills. The answer seems to be a function of the availability of specialized translators (which includes interpreters) and the English language skills of local counterparts. Translators must have mastered the advisor's specialty.

(d) Knowledge of the country or similar countries. In any situation, familiarity with the host country's culture, economy, and politics is beneficial, though not a prerequisite to success. Some very successful advisers arrived in their assigned country lacking country knowledge, but who compensate with sensitivity to local politics and culture.

(e) Role of home office. Headquarters should be able to offer technical advisors substantive support as well as administrative help with visas and travel arrangements. Particularly when the advisor is on site only for a matter of months, headquarters may be the sole source of continuity of assistance provided. The provider needs an administrator who has the time, skills, and experience to discuss the content of the advisor's work and organize other specialists at home for support. The administrator should know key officials in the host and visit the country periodically.

(f) Location of the advisor. A critical question is where to best place the resident adviser. The standard choices are with the government, a private agency, or independent of any local organization. Governments do much of the legislative drafting, implementation, and enforcement, suggesting that most advisers should work in close proximity - some governments, however, hesitate to allow foreign consultants into their ranks. Where the government is more receptive, these questions apply:

- Does the agency really support the goals of the project? Agencies that oppose change should be avoided if alternatives exist.
- Does the agency offer direct access to a senior person in the government who has the authority to decide issues that are important to the success of the project? If not, there is a fair chance the project will languish.

- If the agency shares authority with others about matters critical to the project, does it represent only one group within the government and are the groups so at odds that action is stymied? If so, one should consider non-governmental alternatives.
- Does the agency lack people, space, or other resources to support the advisor? The project should either fund these resources or consider other locations.

The critical element seems to be access to the appropriate government decision makers when government action is needed.

3.1 Resident advisors who live in the country medium or long-term

Resident advisors have an important but circumscribed role in supporting law reform in Eastern Europe. Providers must be sensitive to the limits. For example, an advisor may offer suggestions for policy and evaluate a government's drafts. Drafting basic laws are ultimately political decisions. Governments reach a point when they rightly insist on using their own personnel. The aid donor must exert pressure with a view to the future.

3.2 Short-term advisors

Skepticism about the usefulness of short-term advisors appears to be less than for long-term residents. All short-term advisors during the first phase were well regarded. The success of very short-term advisors is due as much to the advance work of the aid provider as to the qualifications of the advisor. The important elements are that the advisor has mastered the substantive skills and is flexible enough to accommodate local conditions.

3.3 Advisory papers by specialists who do not visit the country

The strength of advisory papers by specialists who have not visited the country is that they can convey concisely the important elements of a law or legal institution in the writers' home country or, when done by comparativists, in several other countries. Advisory papers can be drafted cheaply and quickly, and are commonly used to support legislative drafting. A downside is that they cannot be tailored to the conditions in the host country - less serious at the start of a project, such as drafting new legislation like a law for secured transactions.

Advisory papers should be brief, focus on important issues, and be translated into the local language. Appendices or exhibits in English are of limited value. These additional materials are accessible only to English speakers on the drafting team, whose presence is serendipitous.

4. Local Capacity Development

A goal of technical assistance is to develop the ability of people and organizations in the host country to do the work themselves. While all training and technical assistance vehicles described earlier can be used in one way or another to build local capacity, this section discusses three main vehicles: local counterparts; technical assistance workshops; and support for local organizations.

4.1 Local counterparts

Counterparts to foreign advisors have two jobs, one to link the advisor and the host organization and the other to learn from the advisor. These functions may require different people, for example one to liaise and one to learn. It is helpful, though, to combine both functions in one counterpart with whom the advisor can work closely and continuously. An effective counterpart is critical to the success of law projects because most require the people in the host country to accept and use the project's output - the counterpart facilitates this. For the following discussion, we assume that the project works with a local organization, the host agency.

(a) Selection. Should the host agency or the aid provider select the counterpart? Both parties have a stake in the choice. The host agency will usually want to select the counterpart when it pays the salary. The provider would then at most identify prerequisites for the choice. When the aid provider pays, it is positioned to participate in or make the selection. In this case, the provider should ensure that the host likes the choice. Terms of reference agreed by both agency and provider should name the counterpart(s) or identify the prerequisites for selection as clearly as possible. These may later be useful if the host wants to remove the counterpart.

(b) Position and rank. The advisor's job and the nature of the host agency will determine the appropriate rank for the counterpart. Where the advisor offers general policy advice, a senior counterpart is advisable; where the advisor helps implement existing policy, a less senior counterpart is acceptable. For example, the advisor who sets up registries for secured transactions needs as a counterpart the technocrat who will run the registry. Access to more senior policy makers is also desirable if decisions will be needed to allocate the host agency's resources. A large government agency as host should identify both senior and junior counterparts, while a small private agency can be less structured.

(c) Relation to the advisor. The relationship between the foreign advisor and the counterpart must be defined in advance and, where possible, agreed to by all. The advisor can be the subordinate, equal, or supervisor of the counterpart. When a senior counterpart is involved, such as a minister of justice, a subordinate role for the advisor should be accepted. The project needs this counterpart to decide important issues for the host agency. When the counterpart is a technocrat who works closely and continuously with the advisor (and is being trained), a formal relationship of equals is useful even if the two differ obviously in age or experience. This relationship is probably most difficult to manage, since neither of them has clear authority over the other. Even when the advisor employs or supervises a counterpart, the counterpart will have some role as liaison which can affect the project's success.

(d) Stake in the project. Counterparts must have a stake in the project to motivate their work and to assure that they remain with the host agency after the project ends. The best stake is that the project's success will enhance their career. But reliance on this alone may be inadequate.

The project can pay a significant part of the counterpart's salary to foster loyalty. The problem in Eastern Europe is that salaries are often so low that employees moonlight. A counterpart in a government or many private firms may need other income. The pressure is great on counterparts to seek lucrative part-time consulting work rather than devote themselves entirely to the project even if they are hired full time. USAID's projects may have to compete for the counterpart's time by paying relatively well. The project can also win a counterpart's loyalty and effort by offering future opportunities. For example, a counterpart could be eligible for training abroad at the project's expense or with the help of the project. A counterpart could be in line to manage the project at a later stage after the foreign advisor has left.

(e) Other duties. Even a counterpart who does not need to moonlight may have other obligations within the host agency. These may sap the time the counterpart can contribute to the project. The provider and host need an initial understanding about relative amounts of time to be spent on the project and other work. In addition, some method of recourse should be agreed in case anyone feels aggrieved.

4.2 Technical assistance workshops

Technical assistance workshops offer training linked to the topic of the assistance. For example, a workshop could support the drafting of a law by training drafters in the major policy issues. Many aspects of these workshops are presented in the section about models for training. Here we highlight aspects of special importance for technical assistance.

In the next phase, workshops must stress the link to the technical assistance in the country. This may seem self-evident, but many workshops present law as it exists in the provider's country rather than the host. For

drafting, the workshop ought to use the country's law or the draft under consideration. For enforcement, workshops should improve the capabilities of those who must resolve conflicts concerning the relevant laws.

This means the content of the workshop must be prepared by people familiar with the new laws and the country, while the pedagogy requires professional experience. The advisors and counterparts should play an important role with the substance of the workshop. If they are not professional instructors, they should get help with the instruction techniques. Interactive instruction is most effective for workshops of this sort. The workshop design should generally include: (1) a structure carefully plotted to explore the key issues; (2) a team with comparative experience, including at least one member trained in civil law; (3) instructors who know the host's economic and legal system first hand or, as a second-best solution, preparatory work to inform them; and (4) a discussion format designed to lead to useful conclusions for the participants, which often means using a training facilitator.

Technical assistance workshops as described combine skills and knowledge training, but they may also promote awareness. For example, a short workshop could be used to inform either key officials or the relevant public about a new law on secured transactions.

4.3 Support for local organizations

One way to prompt lasting reform is to build local organizations that would promote law development themselves. For example, it might be concerned that sitting judges would be displaced by reform. Who then speaks for continued law reform? A separate institution with that mission may be essential. The Commercial Law Centers and advocacy grants were small initiatives in this direction over the past few years.

The purpose of a law development center is to offer informed policy advice in the field of business and economic law, broadly defined. Not all countries in the CEE need such a center, but some would certainly benefit.

(a) Political considerations. A law development center, like most law reform, is inherently political. Its leaders also bring their own political ties. Their ties and the center's mission could make them useful to a government that shares their views and anathema to one that does not. Either reaction will influence the effectiveness of the center. There are ways to moderate the impact of political orientation, but it cannot be eliminated. A good understanding of national politics must inform any effort to build such a center.

(b) Scope of the organization's activities. The key issues here are the appropriate disciplines, the range of its work, and its stance as a reformer.

A law development center devoted to commercial law could limit itself to legal issues or be multi-disciplinary. Limiting the center to law focuses its work in the early stages, when resources are likely to be slim. The initiatives during Phase I were devoted exclusively to law. A strong case can be made, however, for linking expertise in law and economics. The center's constituents will include many non-lawyers, often in senior policy positions. Most lawyers in Eastern Europe lack even undergraduate training in economics, so trained economists would add essential expertise.

Should the scope of work extend beyond policy oriented research and advice to training? A center that develops expertise in commercial law should use this to develop skills and knowledge in relevant groups, private or public sector. But a center that extends itself far into training may enter the territory of law schools and universities, which are better placed to educate and should themselves be encouraged.

Should the center act more as a neutral technocrat or actively advocate policies to society at large? This will depend on the leadership. It will also help determine the constituencies of the center. Eastern Europe's need to develop technocratic skills argues for the former approach.

(c) Constituencies of a law development organization. A center could work primarily for executive agencies, the legislature, or private interest groups. The decision will shape the subject matter and impact of its work, its ability to disseminate its work, and its funding. A close relationship with the ministries of justice and finance, for example, would give it access to confidential data and assure that its work had an immediate audience in the government. Work for the legislature, particularly if the assembly was at odds with the executive, might contribute to the democratic process by strengthening the hand of the legislature. A constituency of public interest groups would make the center even more of a political actor in its own right. Government funding would be problematic. The center would have to pursue issues that would generate adequate contributions from the private sector.

(d) Build or join. A basic decision is whether to build a center from scratch in the country or put it in an existing organization. Both approaches were used over the last few years in projects in Eastern Europe. Starting from scratch is time consuming, since the new organization must develop a reputation and build constituents and funding sources. Using an existing organization solves some of these problems. Candidates are universities or existing think tanks. The problem is that one also acquires the bureaucracy and constraints of the organization. The center's flexibility could be circumscribed. Models in other countries, such as economic development institutes or law reform centers, tend to be built separately.

(e) Creating a professional organization. Experience with models elsewhere suggests a law development center would need to build a strong professional organization. The organization needs strong internal financial management and a good strategic or business plan. In addition, staff must be well trained, ideally with some foreign experience. Professionals need skills in foreign languages to have ready access to foreign law sources for models and to foreign advisors. The center needs a strong information base, tied into sources in other countries. To attract these people, the center would have to pay salaries that compete with agencies hiring the best people. In this case, that could include the legal department of the World Bank and local law firms that serve a foreign clientele.

(f) USAID's contribution. USAID's contribution must be carefully thought out. It can provide funds, foreign advisors, and other resources like books. It should not provide the senior managers, who should be local.

A central question is the relative size of the USAID contribution. If USAID funds a large share of the initial costs, it (or the provider USAID works through) could have an important role shaping the strategy and evolution of the center. A small proportion seems to assure a much lower profile. But USAID should be prepared to allow the center flexibility in the use of funds if it is to root and grow. And a goal of financial independence from USAID in the medium term means that other funding sources, local or foreign, must be identified and tapped early on. The importance of Western European law to Eastern Europe suggests the value of cooperating with donors from those countries.

(g) Models from other countries. Useful models exist in other countries if USAID were to pursue the idea of development law centers. A review of their experience would help resolve the issues posed in the preceding paragraphs. Economic think tanks in East and Southeast Asia have prospered as "development institutes" that often work closely with technocrats in the government. Regional law centers are being developed and insights from their experience would inform an effort to make the law center regional in Eastern Europe. The law reform commissions set up in Africa and Latin America several decades ago could offer cautionary guidance for law centers in Eastern Europe.

III. Framework for Evaluating the Impact of Assistance

In response to a requirement in the scope of work, the assessment team developed a series of performance indicators listed in Annex D. These indicators were "tested" in the field in the sense that we used them during the interviews as questions to assess both the impact of activities and the practicality of using these indicators as measures of performance in the future. The indicators presented:

- **Need to rely on more qualitative than quantitative benchmarks.** Because of the nature of law reform assistance, indicators of performance must be heavily weighted towards the development of qualitative rather than quantitative indicators. Attempts to establish quantitative benchmarks that can be used as baseline data for future evaluations are inappropriate and unrealistic.
- **Need to focus on micro rather than macro measures and on individuals rather than whole systems.** As discussed in Chapter 2, the impact of commercial law reform may be felt at different levels. We found that the impact on individuals is often a more accurate indication of effectiveness than that on institutions or larger systems and that, because so many different variables can come into play, macroeconomics measures like "increase in percent of GDP attributed to private sector as a result of increased business formation and investment" (quoted from USAID's "log frame") are inappropriate. Thus, our proposed indicators in Figure 1 are heavily weighted towards individuals and towards micro rather than macro measures.
- **Need to consider the cost of measurement.** Developing performance tracking mechanisms and monitoring procedures can be costly for implementing organizations and future grants or contracts must allow for these costs. Performance measurement also implies a cost for beneficiaries if reporting requirements are placed on them. Too many requirements may burden beneficiaries and discourage participation in project activities.
- **Need to consider limits of measurement.** Indicators can only capture the most obvious forms of impact. The full impact of assistance will only be realized in the long-term and then it may be too subtle to measure and/or attribute to any one project or activity.
- **Need to establish indicators at the beginning of a project.** Performance indicators were not developed by USAID or the IO's when the Commercial Law Project was established. This made it extremely difficult to assess the impact of Project activities because the indicators had to be developed by the team just prior to the assessment and almost three years into the Project. Indicators need to be developed in conjunction with Project goals and strategy at the start of a project and used on an on-going basis as well as during periodic project evaluations.
- **Need to develop and link indicators to specific project goals.** A framework for evaluating the impact or performance of assistance programs in support of commercial law must begin by defining a strategy and identifying a clear set of objectives. Only then can one establish the appropriate set of indicators against which to measure performance.

PD-ABL-246

**SUPPORTING COMMERCIAL LAW
DEVELOPMENT IN CENTRAL AND
EASTERN EUROPE: PAST LESSONS
AND FUTURE GUIDELINES**

ANNEXES

Final Report

U.S. Agency for International Development

Prepared for: Bureau for Europe and the Newly Independent States (of the former Soviet Union), Office of Economic Restructuring

Prepared by: Flora Painter, Team Leader, Coopers & Lybrand/Washington
Marcie Lombardi, Coopers & Lybrand/Budapest
Jeswald Salacuse, Consultant to Coopers & Lybrand
Philip Wellons, Consultant to Coopers & Lybrand

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ANNEXES

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ANNEX A

45.

**SCOPE OF WORK FOR THE MID-COURSE ASSESSMENT OF THE COMMERCIAL LAW
COMPONENT OF THE COMPETITION POLICY, LAWS AND REGULATIONS PROJECT
(180-0026)**

I. BACKGROUND

A. The USAID Economic Restructuring Program

USAID's economic restructuring programs for Central and Eastern Europe and the Baltics (CEE) have been implemented under the Office of Economic Restructuring (ER) -- which consists of three divisions: (1) Privatization; (2) Enterprise Development and (3) Finance and Law. The Finance and Law Division is tasked with programs targeted in the areas of financial sector (which includes fiscal, banking and capital markets activities) and commercial law reform.

- At inception, faced with enormous political pressures to act quickly and cover a broad range of activities and institutions, the economic restructuring programs were primarily demand -- and to some extent vendor -- driven. The notion was comparable to spreading a lot of seeds and seeing what would/could grow.

- Although the demand-driven approach made sense at the time (it was probably the only possibility to quickly jump-start a program with severely limited staff resources, and little identification or experience in the host countries), it is now time to consolidate USAID's experience to date and create a more strategic focus for the region based upon a formula which balances both priorities and resources with a view towards optimal integration:

(1) PRIORITIES: in terms of what the primary institutional and legal needs of the host governments in moving towards a market economy are; and

(2) RESOURCES: in terms of both the assistance that other donors (multi-lateral and bilateral) are already providing, and the technical assistance that best falls within the USG's expertise.

While USAID is building a USG economic restructuring program in the CEE, the enormity of the task transcends the capacity of USAID. Thus, USAID did actively reach out to a variety of different institutions both to leverage human resources (in the sense of a wide variety of skills), and to develop a variety of implementation methods. Other entities involved in financial and legal sector work include: i) Other USG agencies: Treasury, Federal Reserve Board, Securities and Exchange Commission (SEC), Department of Commerce, Federal Trade Commission (FTC)/ Department of Justice (DOJ); ii) International accounting/consulting firms: KPMG, Deloitte Touche, Price Waterhouse; iii) Not-for-profit voluntary organizations: the

Financial Services Volunteer Corps (FSVC) and the American Bar Association's Central and Eastern European Law Initiative (ABA/CEELI); and iv) International organizations: International Development Law Institute (IDLI).

In addition, USAID is a relatively small donor, and thus it is important to dovetail the Agency's work with that of other donors, both multilateral (the World Bank, EBRD, IMF) and bilateral (EC PHARE, British Know-How Fund).

The diversity of implementing institutions USAID uses in its programs provides different forms of USG assistance. The challenges are to: i) work with these institutions to ensure they operate from their own respective strengths; ii) identify which in USAID's arsenal of assistance instruments is appropriate for each particular activity; and iii) determine how to use the different instruments to complement each other. This is what constitutes a USAID program, as opposed to a collection of disparate activities.

Another challenge in defining the conceptual framework for the economic restructuring program, and the financial and legal reform program in particular, is to decide how to allocate resources by country and by topical area. In the financial sector USAID assumes that the banking system and the tasks associated with its development are at the core of financial sector development and the Agency looks for targets of opportunity where assistance can have the greatest impact.

In the commercial law area, the conceptual framework is premised upon the need to concentrate resources on topical areas which correspond to the U.S. comparative advantage, expertise and particular institutional strengths as balanced against assistance from other donors. For example, in general, laws governing real property ownership in civil-law European legal systems are different from those in the U.S.; this argues for less U.S. involvement in this area of law.

On the other hand, the legal frameworks for foreign investment, finance and property transfer (contracts) tend to be more global and are critical in terms of market transition. These are important areas for U.S. assistance. An example of particular relevance is collateral law (secured transactions), which represents an area in which U.S. law has great authority within the international community. Bankruptcy also represents an area where the U.S. experience offers critically needed expertise. Specifically, the U.S. model for restructuring (Chapter 11) can offer a very useful mechanism for CEE economies facing widespread insolvencies.

To be an effective tool for economic restructuring, "commercial law reform" must extend beyond the enactment of legislation to

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implementation and enforcement. Ideal laws can be enacted, but without an understanding of how to implement them (which is difficult in an environment which lacks basic market experience) -- and more fundamentally, without the actual incentives to implement them -- they will have little effect.

B. The Commercial Law Component

A key assumption contouring the Finance and Legal Division's approach to technical assistance is that reform of the legal structure is a critical element of financial reform. Given this relationship and the importance of the financial sector, it is essential to align legal and financial sector work. This plus the above-described overall shift of the USAID economic restructuring program away from a demand-driven to a more strategic focus places the Commercial Law Component at a crossroads. To enhance the impact of its limited resources, USAID assistance in commercial law must better target institutions and legal issues which are critical to the reform of the financial sector and the growth of market driven economies. A more strategic focus is, therefore, needed for the commercial law component. This strategic focus should take into account: regional needs which are a priority for economic restructuring; other outside resources, such as those of other donors, allocated to those needs; and areas in which the U.S. has a comparative advantage.

In addition, some regional expansion is anticipated to meet the needs for commercial law assistance across the CEE region (which currently consists of 13 countries, of which the Commercial Law component has been active in 6 to date). Since USAID resources are limited core models need to be developed in order to address the needs for commercial law assistance of the large CEE region.

Program agreements with the three organizations charged with the implementation of the Commercial Law component -- The Department of Commerce's Commercial Law Development Program (CLDP), the American Bar Association's Central and Eastern European Law Initiative (ABA/CEELI) and the International Development Law Institute (IDLI) -- will all expire by December 1994. Assessment findings will provide a basis for better targeting and reorienting USAID assistance following the expiration of the current grants.

II. ACTIVITY TO BE ASSESSED:

A. Initial Component Structure

The overall purpose of the Commercial Law Component of the Competition Policy, Laws and Regulations Project (180-0026), as

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described in the Component project paper, is to assist with the establishment and refinement of commercial law frameworks in the Central and East European and Baltic countries (CEE), which are critical to the encouragement of private initiatives and the development of market driven economies.

Within the purpose, the objectives are to assist the countries in the region to:

- adopt fair and efficient laws and regulations;
- identify an appropriate structure for effective implementation and enforcement of adopted laws and regulations; and
- develop the human resources necessary for effective implementation and enforcement of adopted laws and regulations.

The Commercial Law component is being implemented through three organizations whose activities are the subject of this assessment:

a) Department of Commerce, Commercial Law Development Program (CLDP); Duration: January 3, 1992 to December 31, 1994; Value: \$2.75 Million; Implementing Method: Inter-Agency Agreement (IAA).

The purpose of the CLDP program, as paraphrased from the IAA document, is to support the development of commercial law infrastructure consistent with free-market principles, which will permit the efficient and predictable conduct of business and thereby encourage private sector growth and attract domestic and foreign investment. Three categories of activities have been implemented: 1) longer term technical assistance and training (provided through a series of consecutive short-term advisors and training activities) intended to strengthen both the content and implementation of the legal framework for specific areas of commercial law; 2) short-term assistance to address specific issues or skill areas through activities that include workshops, seminars, briefings, and one- to two-week pairings of U.S. expert advisors and host-country persons; and 3) legal texts and books supplied to host country partners. While assistance is targeted primarily to host government officials, private lawyers, judges and legal academicians have also been invited to participate in training programs and technical assistance projects.

b) American Bar Association/Central and East European Law Initiative (ABA/CEELI); Duration: June 1992 to April 1994; Value: \$ 2.1 Million; Implementing Method: Grant.

The purpose of the ABA/CEELI program, as paraphrased from the grant document, is to assist in the development of commercial law

frameworks consistent with international legal principles and to support recipient country efforts to become internationally recognized trading partners.

Three categories of activities have been implemented: 1) training and technical assistance to government officials, private lawyers, judges, academics, and other legal professionals to assist in the development, implementation and utilization of commercial laws; 2) technical assistance in the drafting and implementation of legislation relating to the new commercial legal structure; and 3) technical assistance and financial support (financial support in the form of "advocacy grants" not to exceed \$20,000 per year, per organization) to facilitate the institutional development of indigenous non-governmental organizations involved in the reform of the host country's commercial law framework.

c) International Developmental Law Institute (IDLI); Duration: March 1992 to December 1994; Value: \$1.5 Million; Implementing Method: Grant.

The purpose of the IDLI grant, as paraphrased from the grant documents, is to upgrade the skills and knowledge of host country legal professionals and government policymakers in selected commercial law subjects and to strengthen the capability of indigenous organizations to become sustainable centers of continuing legal education.

Two types of activities have been implemented: 1) To prepare legal professionals and negotiators to better advise and assist in commercial law practice and transactions promoting transition to a market economy, IDLI offers in-country short-term training workshops (roughly one week in duration) and fellowships for long-term (two to five weeks) training programs at IDLI headquarters in Rome, with most fellowships allocated to the Enterprise and Investment Lawyers Course; and 2) To assist indigenous legal organizations to become financially sound and viable sources of continuing legal education, IDLI provides "advocacy grants" (not to exceed \$20,000 per organization per year) and short-term technical assistance in the basics of organizational management and finance.

The activities of all three grantees were originally intended to focus on five legal topics:

- 1) legal impediments to privatization; 2) foreign and domestic investment; 3) commercial dispute resolution; 4) commercial real property and intellectual property rights; and 5) government procurement systems.

Four priority countries - Albania, Bulgaria, Lithuania, and Poland - were selected as initial recipients of assistance.

Limited activities were also authorized in two additional countries. IDLI was authorized to undertake activities in Hungary in lieu of Albania, and Commerce (CLDP) was asked to switch its focus from Bulgaria to Romania. For the purpose of this assessment, programs in three of the four priority countries -- Bulgaria, Lithuania, and Poland -- will be reviewed.

Implementing entities were requested to work in a collaborative manner and to develop a joint strategy for each country. Strategies for commercial law activities in the four priority countries were subsequently developed by USAID in collaboration with the three implementing organizations. USAID has encouraged the collaborative approach by holding semi-annual coordination meetings with the three organizations. The first meeting was held in Washington, D.C. in March 1992, immediately following the component's inception, the second in Rome in February 1993 and the third in Vilnius in July 1993. Reporting cables on the conclusions of the second and third coordination meeting will be provided among background documentation.

B. Future Component Direction

The initial Component design established very broad topical parameters and did not attempt to establish direct linkages between commercial law assistance and specific areas of USAID funded financial reform or privatization activities. With the growing emphasis on strategic targeting of resources, the initial five legal topical areas are being gradually superseded by the conceptual framework described above in Section I. A. and B. of this Scope. Topical areas need to be more narrowly defined to permit tighter linkages between commercial law assistance and the financial and privatization efforts undertaken by the Office of Economic Restructuring.

Likewise, the above listed purpose statements that define the work of implementing entities reflect the demand-driven origin of the Commercial Law Component, and are too broad and redundant to facilitate the targeting of scarce resources to key institutions and legal topics. The Finance and Legal Division has begun working with the implementing entities in order to narrow the focus of activities undertaken by each organization. For example, the Commerce CLDP program is moving toward a narrower emphasis on the trade, investment and intellectual property areas. The findings resulting from this assessment should help the Finance and Law Division to further sharpen the focus of work undertaken by the implementing organizations.

III. SCOPE OF WORK

A. Purpose of Assessment:

The purpose of this mid-course assessment is to help increase USAID's understanding of the efficiency of different development interventions, and to help determine which types of interventions are generating development impacts and the reasons for success or the lack of success.

The Contractor shall assess the impact, effectiveness and relative cost benefit of different assistance modes and identify successful models of assistance for future funding. In producing recommendations on the core assistance models, the Contractor shall take into account USAID's regional priority needs and provide documentation that either supports, contradicts or supplements country-specific priority needs. The Contractor should also particularly consider the comparative advantages and disadvantages of particular areas of US legal assistance in a European civil law context.

The following should also be elements of the assessment which combine to identify core assistance models:

(i) to recommend indicators and benchmarks as measures of performance effectiveness that can be applied to monitor implementation and overall program impact. These measures should be developed and tested during the assessment itself -- with application to future project development.

(ii) to assess the effectiveness of activities undertaken under the particular grants and inter-agency agreements. Effectiveness should be viewed in terms of the actual impact of the activity and, if feasible, on the basis of costs associated with achieving that impact -- as compared among the implementing institutions. Cost analysis will be based on a comparative cost methodology developed prior to departure.

B. Assessment Questions:

The Contractor's report shall provide a concise, analytical examination of the issues listed below for each of the three countries visited -- Bulgaria, Lithuania and Poland. The specific questions that the Contractor will answer in each country are:

1. Effectiveness of USAID-funded commercial law assistance in the recipient countries:

- Document the patterns in the categories of assistance requested and provided -- what categories of assistance are in greatest demand? What categories of requests are acted upon? What categories of organizations place the largest volume of requests? What is the role of the requesting

entities in the evolution of the local legal system? Assess the volume of the demand for assistance and the degree to which requests are acted upon by grantees.

- Analyze whether the assistance has been tailored to the specific legal context of each country (e.g., whether experts have understood and taken into account the local laws and institutional, and political circumstances and worked with the appropriate host country institutions).

- Assess the technical expertise and skills of advisors used by each implementing entity to provide legal advice in the context of the local legal law system.

- Document the extent of participation by local lawyers -- whether from the public or private sector -- in the assistance activity.

- Document the sustainability of each major category of assistance in each country -- what outputs continue to have impact after the completion of the activity (e.g., enactment of draft law; incorporation of advice into written legal framework; surviving network of counterparts to sponsor training and/or reform; expanded privatizations; etc.)? Provide country-specific examples; in particular assess the merit of CEELI and IDLI-sponsored Commercial Law Centers as indigenous non-governmental organizations committed to long-term continuing legal education and legal reform.

- Document the extent to which the assistance contributed to the development of legal frameworks and human resources which are better suited to support the growth of market-driven economies. Provide country-specific case study examples.

- For each country, determine in which of the topical areas (e.g. collateral securities, intellectual property, bankruptcy, contract law, banking, dispute resolution) in which US advisors have the most expertise and impact; assess the extent to which local counterparts in the public and private sectors and the public recognize the contribution and impact of assistance provided by U.S. advisors.

- Assess whether the USAID funded implementing entities coordinate effectively in the delivery of assistance: with each other, with the USAID Representative, with other USAID-funded activities and with other multilateral and bilateral donor programs. How does the degree of coordination affect program impact? Document with examples from field research.

- Assess the grantees' performance to date on ratio of female beneficiaries of assistance programs, particularly

the percentage of women benefitting from training. Comment on gender-specific barriers or obstacles that may affect the ability of potential women beneficiaries to benefit fully from technical assistance and training provided under the Component.

2. Comparative cost basis:

- What is the all-inclusive cost to USAID for providing focussed technical assistance activities by each grantee to the host country per net unit of assistance (e.g. including both direct and attributed expenses and both headquarters and field costs including fair share of overhead)?

- How do these costs compare among the three different types of implementing organizations for comparable types of common activities such as training workshops? Compare these costs with the costs of similar types and duration of training provided by contractors to USAID, e.g. Price Waterhouse (for corporate governance training financed under Project 180-0026).

- Interview a sample of participants per grantee to assess the quality of training received for the cost including comparative sample of Price Waterhouse trainees in Poland.

3. Management/administrative structures:

- Assess the extent to which grants or agreements have been effectively administered. Interview a sample of advisors, beneficiaries and USAID Representatives to assess: extent of mutual understanding between USAID, host country, and implementors on the nature of tasks and expected results; appropriate timing and duration of assistance to produce expected results; and level of host institution preparation to logistically accommodate the advisors.

- Assess the method used by each implementing organization to recruit, select and prepare personnel for specific assignments in the field. Are individuals with appropriate qualifications/skills being used by implementing organizations? How do the recruitment and selection approaches used affect the quality of technical advisors/trainers selected? What is the level of preparation of advisors (e.g. are advisors provided with information about relevant host country laws, structures, institutions and socio-economic context as well as living and working conditions)? To what extent do knowledge of the local language and experience in living abroad affect the effectiveness of the selected individuals?

- Assess how each grantee's home office management structure

and type and level of support for field operations affects the quality of technical assistance and training delivery. Specify elements of management which have had the greatest impact on delivery of assistance. To the extent time permits, compare the management structures used by the three implementing organizations with those used by the Federal Trade Commission and the Department of Justice which jointly administer the Competition Component of the Competition, Policy and Regulations Project (180-0026).

- Assess to what extent the implementing organizations draw upon their respective areas of institutional strength and expertise in program delivery (e.g. Commerce - trade, investment and intellectual property; ABA/CEELI - availability of overall ABA (as distinguished from the ABA's CEELI project) member resources and ABA continuing education resources, IDLI - training, etc.). Assess how the current mix of assistance reflects the institutional focus of each grantee, and, if needed, recommend how assistance mix of each grantee could be reoriented to draw more fully on each institutional expertise.

C. Team Composition

a) The team expertise shall consist of:

- assessment/program design specialist (Team Leader);
- legal expertise with commercial law background and exposure to the European civil law system; and
- economist (with private sector background).

In addition, USAID reserves the right to appoint a USAID employee to act in the capacity of a team member, observer, or consultant throughout this process.

b) Preference will be given to a team with strong interdisciplinary skills and relevant Central and East European experience. All team members should also possess superior written and verbal communication skills.

c) Contractor will certify that there is no conflict of interest with respect to the performance of this assessment on the part of the contractor and each team member for this assessment. Contractor will also guarantee that the approved team members will be available for eight days of information gathering in Washington, D.C. prior to departure; one day of information gathering in Rome, Italy; thirty days of field work; five days of drafting of the final report; and ten days for report revision and completion.

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D. METHODOLOGY

Prior to departure for field research, the contractor shall:

a) Review background documents, including:

- commercial law component project paper;
- two grant Agreements, one Inter-Agency Agreement and their respective amendments;
- grantee workplans;
- grantee quarterly, semi-annual and annual reports;
- grantee trip and assignment debriefing reports prepared by advisors and liaisons;
- USAID country strategies for the commercial law component;
- reporting cables on USAID coordination meetings in Rome and Vilnius;
- SEED Act country strategies;
- recipient country's commercial laws and policies;
- recent USAID assessments related to grantees and relevant theme areas; and
- sample training materials from courses given by implementing entities in recipient countries and in third countries.

b) From background documents provided by project officer and meetings with grantees, collect information which addresses characteristics of assistance by grantee and by country including:

- Who have been the recipients of USAID assistance?

- government institutions
- professional associations
- NGOs
- other.

- What are the costs to USAID of assistance provided?

c) Schedule appointments in Washington D.C., conduct interviews and hold briefings with USAID technical and evaluation staff and

country desk officers, grantees, other USC agencies, NGO and other donor programs in Washington, D.C., and conduct telephone interviews with select former advisors residing outside the Washington, D.C. area (Washington, D.C. 8 days, and 1 full work day at IDLI headquarters in Rome).

- d) Obtain concurrence from USAID on sample size and criteria for selection of individuals to be interviewed.
- e) Recommend benchmarks, indicators and measures of performance effectiveness that should be applied to monitor program impact. The suggested indicators will be submitted to USAID for concurrence at least one week prior to departure.
- f) Propose a method for comparative cost calculation for submission to USAID for concurrence at the start of the Washington, D.C. briefing period prior to departure for the field.
- g) Schedule appointments in the field and prepare draft itinerary. The Contractor is required to be logistically independent in Washington, D.C. and in the field. All logistical support will be provided by the Contractor, including travel, transportation, secretarial and office support, translation and interpretation, report printing and communication, as appropriate. Funds are budgeted for contractor to hire local logistics assistance in each country for scheduling appointments, and for interpretation services.
- h) ENI/EUR/ER staff will hold briefings with the assessment team to ensure pre-field assessment exchanges with USAID/W officials and grantees; and to provide an opportunity for team building.
- i) USAID Project Officer will obtain country clearance for the team members from each of the USAID Representative offices.

During the field work, the Contractor shall:

- a) Undertake extensive program review in Bulgaria, Lithuania and Poland up to ten days in each country. This will include meetings with the USAID Representative and U.S. Embassy officials (e.g. Commercial Attache), current grantee and cooperating agency advisors and liaisons or in-country representatives, local beneficiaries of assistance programs, local legal practitioners, local business individuals, members of the recipient country government involved in privatization and financial and legal reform, and other donor representatives active in the host countries.

At a minimum those individuals and organizations, identified in Appendix A., shall be interviewed in addition to others as deemed

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appropriate by the team. This list provided in Appendix A. is not exhaustive. The assessment team should talk with any party it feels is relevant to this undertaking.

b) Collect data on all approved indicators and benchmarks of performance.

c) Meet with the USAID Representative, or designee, for orientation in each country evaluated at the beginning of the field review. The team members will present a summary of preliminary findings to the USAID Representatives in each country (Bulgaria, Lithuania and Poland) prior to departure.

E. Work Week

Subsequent to advance approval from USAID, a six day work week will be authorized in the field.

F. Deliverables

One week prior to departure, the contractor shall submit a draft workplan to ENI/EUR/ER for concurrence. The workplan will include agreed upon (i) field itinerary and draft appointment schedule, (ii) indicators, benchmarks and other performance measures, (iii) questionnaire to be used for data gathering in the field, and (iv) comparative cost methodology.

The report shall, at a minimum:

- 1) include an executive summary which summarizes all major findings and conclusions of the report; summarizes primary findings of the comparative cost analysis and those corresponding to specific benchmarks and indicators; and identifies core assistance models which have achieved the greatest impact;
- 2) respond to all assessment questions in section III.B. above;
- 3) identify activities which are most and least cost-effective and compare these findings with data on benchmarks and indicators of effectiveness;
- 4) identify core models of high-impact, cost-effective assistance that would be appropriate for effective replication in other Central and East European countries, including the country-specific conditions and assumptions that would be required for the effective implementation of such models;
- 5) identify types of assistance that should be either continued, expanded, discontinued, or postponed, to ensure project sustainability subsequent to USAID's cessation of funding; and
- 6) identify mechanisms for streamlining of activities where

overlap exists and improved coordination is needed.

During the first week after return from the field, the contractor's summary findings and conclusions will be presented to ENI/EUR staff at a preliminary oral debriefing meeting. The contractor will submit a preliminary draft report not to exceed 25 to 35 pages in text (6 copies, plus 1 Word Perfect 5.1 disk copy), plus draft Project Evaluation Summary Sheets within 7 days after the initial debriefing.

In a period not to exceed 21 days USAID will provide comments. The contractor will correct all errors of fact within the next 3 days. USAID will submit the revised report to the grantees and provide combined grantee and USAID comments to the Contractor within a subsequent period not to exceed 21 days.

Upon receipt of USAID and grantee comments, the Contractor will have 7 days to deliver a final report in the range of 25 to 35 pages in text including an acronym list and a five page executive summary (49 copies bound, 1 unbound, 1 Word Perfect 5.1 disk copy). Additional material may be submitted in Annexes, as appropriate; e.g., bibliography of documents analyzed, list of agencies and persons interviewed, list of sites visited, etc.

At USAID's discretion, the Contractor team may be required to provide a final debriefing to grantee implementing entities.

evalab.3: 2/3/94

ANNEX B

QUESTIONNAIRE FOR PARTICIPANTS

This questionnaire is a key part of a study of assistance activities financed by the United States Agency for International Development (USAID) to support the development and reform of commercial law in Bulgaria, Lithuania and Poland. The purpose of the study is to examine these activities and their results, with the objective of strengthening assistance programs in commercial law reform. The questionnaire asks for your comments on the activities (training seminars, conferences or workshops) that you participated in, and that were organized by one of the three organizations described below. You might be familiar with several activities being financed by USAID related to commercial policies and the legal system in your country, but for this study we are interested only in your experience in a training, workshop or conference activity sponsored by one of the following organizations:

- **Commercial Law Development Program (CLDP).** This program is being carried out by the US Department of Commerce. It is intended to assist the development of commercial law infrastructure particularly laws related to trade and intellectual property. The CLDP provides: (1) longer term technical assistance and training, (2) short term seminars, briefings, workshops including pairing of U.S. expert advisors for one to two weeks with lawyers in your country; and (3) legal reference and text books for public access.
- **Central and East European Law Initiative (CEELI).** This program is being carried out by the American Bar Association (ABA). It is intended to assist your country develop a framework of commercial law consistent with international legal principles. The CEELI provides: (1) training and technical assistance to government officials, private lawyers, and academics; (2) technical assistance in the drafting and implementation of commercial law, and (3) financial support to non-governmental institutions (NGOs), like commercial law centers, involved in the reform of commercial laws.
- **International Development Law Institute (IDLI).** This program is managed by IDLI from its headquarters in Rome and provides training in commercial law and workshops (usually one week in duration) in your country; (2) fellowships for two to five weeks of training programs at the IDLI training center in Rome; and (3) financial support to non-governmental institutions (NGOs), like commercial law centers, involved in the reform of commercial laws.

You are one of many participants in the USAID-funded projects who have been asked for his or her opinions on the training, workshop or conference activity that you attended. We assure you that your responses will remain anonymous due to the aggregation of data. Your responses are very important in helping to improve the relevance and quality of training, workshops and conferences and we appreciate your time and effort in completing this questionnaire. Section I asks for quantitative evaluation (on the scale from 1 to 5). Section 2 asks for your written comments and suggestions.

INSTRUCTIONS

Your responses to the questionnaire will remain anonymous.

For documentation purposes only, please provide the following information:

Last Name: _____

First Name: _____

Present Position: _____

Male/Female: _____

Please complete the questionnaire by June 28, 1994 and return to:

In which of the workshops/seminars/training organized under the auspices of USAID (make a cross (X) at the list that follows) did you participate:

- Joint Venture & Franchising Agreements (January 1993, Varna)**
- International Commercial Arbitration & Alternative Dispute Resolution (April 1993, Velingrad)**
- The Legal Aspects of the Purchase & Sale of an Ongoing Business (Sept. 1993, Varna; Jan. 1994, Plovdiv)**
- Training of Trainers (March 1994, Regional)**
- Copyright Law Workshop (October 1992, Sofia)**
- International Sale of Goods Contracts Training Workshop III (June 1993, Sofia/Varna)**
- Franchising (April 1994, Sofia/Varna)**
- GATT (June 1994, Sofia)**

If you did not participate in any of these please advance to Section II.

8. Would you evaluate the skills and experience of the experts as:

Relatively low	mixed	good	relatively high	very high
1	2	3	4	5

9. Would you evaluate the selection of speakers as:

Poor	marginal	average	good	excellent
1	2	3	4	5

10. Was there a good match between the audience and the degree of specialization of the topic presented ?

Not at all		To a moderate degree		To a great degree
1	2	3	4	5

11. How would you evaluate outcomes of the seminars and training sessions?

Irrelevant	interesting but of no practical value	important and of some practical value	very important and concrete	
1	2	3	4	5

12. If you are involved in the development of laws and regulations in your country, have you been able to use the knowledge or information gained in the seminars or training programs to further these activities?

Not at all	not really	to a limited extent	yes, it proved useful	yes, to a great degree
1	2	3	4	5

13. Have you used the knowledge and information gained during the seminars or training in your legal or consulting practice?

Not at all	not really	to a limited extent	yes, it proved useful	yes, to a great degree
1	2	3	4	5

14. If offered, would you take part in follow-up seminars or training on similar topics?

No	maybe	it depends on my schedule	yes, I would like to	definitely yes
1	2	3	4	5

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3. Please rate the effectiveness of the following types of assistance using 5 for the best, and lower digits, down to 2 for the worst mode that should not be used at all.

- _____ technical assistance and financial support to commercial law centers and other indigenous non-governmental organizations involved in legal reform
- _____ short-term legal training workshops, seminars and conferences
- _____ in-country legal training
- _____ U.S.-based, short-term legal training
- _____ regional legal training
- _____ longer-term advisors/legal specialists (stay of 6 months or more)
- _____ short-term (1-2 weeks), issue-oriented pairings of US expert advisors and local counterparts
- _____ topic-oriented, short-term (3 months or less) technical legal assistance
- _____ written assessments/commentaries of proposed changes in laws or regulations

4. Considering that USAID has limited resources available, please describe the top two types of assistance that you would consider the most appropriate and explain their advantages and applicability to local conditions.

5. Please provide any additional comments or suggestions.

QUESTIONNAIRE FOR HOME OFFICE INTERVIEWS

A. Planning-related Questions

- 1. How do you determine what laws and topics will be the primary focus of assistance provided in each country? What in-country sources do you rely on, in developing the country program? How much of the design is decided upon before the country representative/technical specialist is in place?**

For CEELI: How do you select participants/recipients for commercial law centers?

- 2. In recruiting resident personnel (liaisons, long-term advisors) do you tend to look for specialists or generalists?**

3. **How are resident personnel recruited? Is there a formal selection process? Criteria? How about short-term specialists? Workshop leaders?**

4. **How are trainers selected? Same trainers used for in-country and Rome?**

5. **Are the in-country allowances and terms of service for resident personnel uniform? How much assistance do you provide to get representatives settled in? Housing selection? Office space?**

B. Implementation-related Questions

6. **What have been the biggest problems in recruiting and selecting resident personnel? Short-term specialists?**

7. **How do you stay current with what is going on in each country? Formal reporting requirements? How much autonomy does the resident personnel have in selecting topics and activities? Selection of short-term personnel?**

8. Are any goals or desired outputs for the assistance set for the liaison/long-term advisor prior to or during tour?

9. How do you coordinate activities with:

- USAID**
- Other grantee organizations**
- Other donors**

10. What areas of assistance have you supported most? (E.g., as listed in log frame: (a) initiation activities, (b) implementation activities (c) enforcement activities.) Please rank them.

14. Has the feedback been useful in structuring country activities or training topics?

15. How do you perceive your institutional strengths? To what extent do you think the activities to date have reflected those strengths?

16. What changes are needed to improve the impact of your activities/training? At the home office level? In the field? Host government?

C. Follow-up/Impact-related Questions

9. **What are some of the specific accomplishments that can be attributed to the technical assistance provided under the project?**

For example:

- a. **codes/laws/regulations revised or drafted. Explain.**
- b. **institutions strengthened. Explain.**
- c. **discussion or action in the national parliament. Explain.**
- d. **coverage by national/local print or visual media.**
- e. **discussion in professional journals or literature.**
- f. **generating interest, training, presentations or other means of increasing coverage of the subject matter.**
- g. **increase (decrease) in the number of dispute resolution/civil action cases being filed.**
- h. **skills improved to better handle commercial policy related issues.**
- h. **other.**

10. **If technical assistance involved the reform or development of a code, law or regulation, please assess the progress that has been made to date in adopting, implementing, and enforcing the code, law or regulation in question.**

11. **If your function relates to law school activities or legal education, please describe how the assistance provided may have contributed to improvements in legal education? Were law curricula revised or developed to enhance legal education/training? In what ways?**

12. **Please assess the broader impact of the technical assistance in question (e.g. did it help to build awareness or consensus within your organization, the broader legal community, or the public?)**

13. **In what ways did the assistance meet (or not meet) your expectations? What would you change about the nature and/or format of the assistance provided?**

14. **Which sectors/groups, in your opinion, have benefitted or will benefit most from the assistance provided? How might it impact women?**

15. **As a result of the technical assistance, what can your ministry/agency/organization do now that it could not do before?**

QUESTIONNAIRE FOR PROVIDERS OF TECHNICAL ASSISTANCE AND TRAINING**

**** In some cases, providers may also include project administrators.**

This questionnaire is a key part of a study of assistance activities financed by the United States Agency for International Development (USAID) to support the development and reform of commercial law in Bulgaria, Lithuania and Poland. The purpose of the study is to examine these activities and their results, with the objective of strengthening assistance programs in commercial law reform. The questionnaire asks for your comments on the activities (training seminars, conferences or workshops) that you participated in, and that were organized by one of the three organizations described below. You might be familiar with several activities being financed by USAID related to commercial policies and the legal system in your country, but for this study we are interested only in your experience in a training, workshop or conference activity sponsored by one of the following organizations:

- **Commercial Law Development Program (CLDP).** This program is being carried out by the US Department of Commerce. It is intended to assist the development of commercial law infrastructure particularly laws related to trade and intellectual property. The CLDP provides: (1) longer term technical assistance and training, (2) short term seminars, briefings, workshops including pairing of U.S. expert advisors for one to two weeks with lawyers in your country; and (3) legal reference and text books for public access.

- **Central and East European Law Initiative (CEELI).** This program is being carried out by the American Bar Association (ABA). It is intended to assist your country develop a framework of commercial law consistent with international legal principles. The CEELI provides: (1) training and technical assistance to government officials, private lawyers, and academics; (2) technical assistance in the drafting and implementation of commercial law, and (3) financial support to non-governmental institutions (NGOs), like commercial law centers, involved in the reform of commercial laws.

- **International Development Law Institute (IDLI).** This program is managed by IDLI from its headquarters in Rome and provides training in commercial law and workshops (usually one week in duration) in your country; (2) fellowships for two to five weeks of training programs at the IDLI training center in Rome; and (3) financial support to non-governmental institutions (NGOs), like commercial law centers, involved in the reform of commercial laws.

You are one of many participants in the USAID-funded projects who have been asked for his or her opinions on the training, workshop or conference activity to which you provided technical assistance and training. We assure you that your responses will remain anonymous due to the

aggregation of data. Your responses are very important in helping to improve the relevance and quality of training, workshops and conferences and we appreciate your time and effort in completing this questionnaire.

INSTRUCTIONS

Your responses to the questionnaire will remain anonymous.

For documentation purposes only, please provide the following information:

Last Name: _____

First Name: _____

Present Position: _____

Male/Female: _____

Please complete the questionnaire by June 10, 1994 and return to:

I. Questions for Short- and Long-Term Advisors

A. Planning-related Questions

1. What is your area of specialization?

2. How did you come to be recruited or first make contact with the organization sponsoring your activities in Eastern Europe? What did the selection process involve?

3. How much time were you allowed to prepare for your assignment prior to your departure from your home country? Was the time allowed for preparation adequate? Were materials readily available? How much time did you have to prepare in the host country?

4. Were you comfortable with your understanding of your assignment before arriving in the host country? Your living/working conditions? Were/are conditions much as you expected? Suggestions for more/less preparation?

5. Was the ministry/agency/organization that you were/are working with adequately prepared for your assistance role? Was there an adequate needs assessment prior to the start of the assignment or did you need to define the needs as you went along?

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6. ***For country liaisons and long term advisors. How did you decide what laws/activities should be the primary focus of development/reform? What sources did you rely on in reaching these conclusions? Do you have a country strategy? If yes, how does it relate to USAID's country strategy?***

7. **Was a needs assessment conducted prior to the selection (type and nature) and provision of the assistance in question (e.g., training needs assessment, or assessment of technical assistance requirements)?**

B. Implementation-related Questions

8. For country liaisons/long-term advisors: How do you coordinate project activities with:

- **USAID**
- **Other grantee organizations**
- **Other donors**

9. For country liaisons/long-term advisors: How much of your time is spent on management (e.g., logistics, reporting) of the project relative to substantive matters? Is this the distribution of management/technical responsibilities you expected?

10. What categories of assistance are in greatest demand? How much of the assistance provided is reactive as opposed to proactive? Where do most of the requests for assistance come from (e.g., ministries, universities, NGOs)?

11. Describe the role of local counterparts in the implementation of project activities.

12. For country liaisons/long-term advisors: How was the local implementing agency selected (e.g., government entity that serves as primary contact for project)?

13. For country liaisons/long-term advisors: Describe the role of the Commercial Law Center and how it was selected for participation in the program?

14. How would you rate the capacity of the organizations you are working with in-country to assess/compare laws? Draft specific laws/regulations? Which ones?

Non-existent Barely Adequate Adequate Strong

1

2

3

4

5

15. How would you rate the adequacy of training among the lawyers you are working with in-country on:

their legal specialty:

<u>Poor</u>	<u>Barely Adequate</u>	<u>Adequate</u>	<u>Good</u>	<u>Excellent</u>
1	2	3	4	5

your legal specialty:

<u>Poor</u>	<u>Barely Adequate</u>	<u>Adequate</u>	<u>Good</u>	<u>Excellent</u>
1	2	3	4	5

16. What level of receptivity did you encounter for development/reform among agency counterparts? Among private practitioners and the legal community?

Agency:

No interest	Moderate interest	Considerable interest		
1	2	3	4	5

Legal Community:

No interest	Moderate interest	Considerable interest		
1	2	3	4	5

17. What specific law(s) or activities were you involved in assisting? Were these new to the country? What are the major impediments to adequate development of the law or activity in question? Implementation? Enforcement?

**18. What resources do you rely on in assessing the effectiveness of existing laws/activities?
Interpretation and comparison of laws/activities?**

19. Have your activities involved working with the law schools? If yes, how? Have you worked with members of the faculty in their university capacity (not as consultants)?

20. What evidence, if any of gender-specific barriers have you found, which might limit the ability of women to participate in and benefit from the program?

Follow-up/Impact-related Questions

21. **What has been the outcome to date of your assistance activities? What are the primary milestones that you have relied on to assess improvements in your area of assistance?**
22. **What is your assessment of the progress that has been made in development/reform of the laws/activities/functions that have been the focus of your assistance?**
23. **What are some of the accomplishments that can be attributed to the assistance provided by CEELI/CLDP?**
For example:
- a. **codes/laws/regulations drafted or passed. Explain.**
 - b. **improved/strengthened institutions (both public and private). Explain.**
 - c. **discussion or action in the national parliament**
 - d. **coverage by national/local print or visual media**
 - e. **discussion in professional journals or literature**
 - f. **generating interest training/presentations or other access to increased coverage of your subject matter.**
 - g. **increase (decrease) in the number of dispute resolution/civil action cases being filed.**
 - h. **skills improved to better handle commercial policy related issues.**

24. For country liaisons and long-term advisors. What indicators or tools are you using to assess the performance of the project or the results of the activity in question?

25. What suggestions do you have for future advisors/liaisons as a way of generating more support among your local counterparts for development/reform of commercial laws?

26. Based on your experience, what changes, if any, would you suggest to the overall commercial law assistance program?



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27. Please describe other successes/accomplishments that you know have resulted from your assistance activity and provide a more complete picture of your work -- especially work with ministries or other government agencies, law drafting groups, legislators, judges, law professors, bar groups, chambers of commerce/trade, stock/securities markets, commercial companies, business clubs (e.g., Rotary Clubs), public interest groups, and others.

28. Please provide any additional comments or suggestions.

4. Were you familiar with the local context? If not, did the sponsoring organization provide any background or briefing materials prior to your presentation? Were you able to consult with local national experts (judicial, legal, economists, academics, government officials, etc.) either prior to or during? Describe briefly, to include degree of cooperation encountered.

5. Had there been a training needs assessment?

B. Implementation-related Questions

6. What was the subject of your training/workshop? How much influence did you have on the selection of the topic?

7. How would you rate the appropriateness of your audience for the given training program, seminar or workshop:

Totally wrong		Mixed group	Absolutely right audience
1	2	3	4 5

8. What is your estimate of the audience's level of prior exposure to your course/workshop topic:

Totally new	Some previous exposure	Highly knowledgeable		
1	2	3	4	5

9. What concept(s) seem to present the most difficulty to participants? Is there some way of avoiding/reducing the difficulty created?

10. How receptive was the audience to the material presented?

11. What was the primary country of origin of the laws/practices you described?

12. What evidence, if any of gender-specific barriers have you found, which might limit the ability of women to participate in and benefit from the program?

C. Follow-up/Impact-related Questions

13. **Did participants complete an evaluation form on the training/seminar/workshop? Were the results of the evaluation analyzed? How were the evaluation results incorporated into the development of future activities? Please provide some examples.**

14. **How would you change the format of the training/workshop sessions based upon your experience in delivering one or more sessions?**

15. **What have you found to be the most effective method of presentation? Lecture? Participation? What differing methods would you suggest for presenting various topics?**

16. **Have you had much contact with training or workshop participants since completing your program? What do you rely on in judging the benefits of the training/conference to former participants?**

17. **Have you maintained any contact with previous participants? Can you summarize their experiences since attending the training/workshop?**
18. **How would you characterize the degree of interest in your session as evidenced by:**
- (a) **level of attendance**
 - (b) **quality of their questions and/or discussion**
 - (c) **types of participants (e.g. appropriateness of participants to topic under consideration)**
19. **How much follow-up, if any, was there on the part of the participants in terms of:**
- (a) **number of requests for future assistance and/or materials**
 - (b) **continuity of contact/communications following initial exposure**
20. **What specific areas of commercial law should be covered in future training/conference sessions?**

21. Based on your experience, what changes would you suggest to the commercial law training program?

22. Please provide any additional comments or suggestions.

ANNEX C

**READING MATERIAL CONTENTS
FOR THE MID-COURSE ASSESSMENT OF THE
COMMERCIAL LAW COMPONENT OF
THE COMPETITION POLICY, LAWS AND REGULATIONS PROJECT**

Country: Poland
Organization: CEELI
Type: Workshop Materials/Presentation
Title: International Contracts and Joint Ventures
Workshop: Agency and Distribution Contracts/June 1993

This material is a presentation given by David L. Teichmann, Assistant General Counsel, Tandem Computers Incorporated, at CEELI's workshop on International Contracts and Joint Ventures. Points covered in the presentation include: The Contracting Process; Formation of a Contract; Agents; Distributors; Types of Agreements; Technology Licensing; Production and Assembly; Joint Ventures; and Distribution Agreements. The material also includes a "Distributor Agreement" between U.S. Computer Manufacturer Inc. (U.S. firm) and Overseas Computer Distribution Limited (Polish firm), an "End-User Software Sublicense Agreement," and a "Joint Venture Shareholders Agreement."

Country: Poland
Organization: CEELI
Type: Workshop Materials
Title: Workshop Briefing Book: The Environmental Aspects of Privatization
Workshop: Environmental Issues in Privatization Transactions

Included in this material is:

1. A memorandum from Alan J. Birnbuam to participants in the workshop on "Environmental Provisions in U.S. Corporate Transactions." This memorandum lists types of environmental provisions and the negotiating objectives of a "governmental seller," and gives example environmental provisions. A "caveat" is also added, i.e., that while the "provisions are typical of the types of environmental provisions in acquisition agreements in between large corporations in the United States, they are not model provisions."
2. An article written by Ruth Greenspan Bell in collaboration with Thomas Adam Kolaja entitled "Capital Privatization and the Management of Environmental Liability Issues in Poland."
3. Excerpts from The Polish Commercial Code and the Polish Civil Code.

4. A copy of a paper presented by Susan Cummings at Environmental Management in a Transition to Market Economy: A Challenge to Government and Business in Geneva on January 6-8, 1993. The paper is entitled "The Resolution of Environmental Protection Issues in the Context of Privatization in Poland." The paper covers: "The Emerging Role of Environmental Issues in the Process of Privatization;" "Existing Legal Provisions Defining a Property Owner's Liability for Environmental Contamination;" "The Privatization Process in Poland;" "The Resolution of Responsibility for Environmental Contamination in Privatization Transactions;" and "The Future of Environmental Protection and Privatization in Poland."
5. A "tentative agenda" for the Polish Privatization Ministry Workshop.
6. A packet of five "Environmental Hypotheticals Arising in Privatization Transactions."
7. The Resolution Trust Corporation's "Phase I: Environmental Site Assessment for the Identification of Hazards and Special Resources." (January 22, 1993)
8. The workshop's Briefing Book providing material on: "Introduction to Environmental Reforms in Central and Eastern Europe;" "The State of the Environment in Poland;" "Relevant Laws: Poland;" "International Organizational Approach;" and "Resolution Trust Corporation."

Country: Poland
Organization: CEELI
Type: Workshop Materials/Presentation
Title: Sample Agenda, Speech, and Press Interview
Workshop: Private Real Estate Development Utilizing State-Owned Property, 9/93

This packet contains the agenda for the "First Biennial AWRSP Housing Conference Oddzial w Poznaniu held at Czerniejewo Palace 14 September 1993," a speech given at the Housing Conference, and an interview with David Singer, Legal advisor for privatization at the Agency for State Agricultural Property.

Country: Poland
Organization: CEELI
Type: Workshop Materials
Title: Sample Invitation
Workshop: Agency and Distribution Contracts, June 1993

This is a sample invitation to the seminar on Joint Ventures and Distribution Law.

Country: Poland
Organization: CEELI
Type: Report
Title: Commercial Law Legal Specialist Report - David Teichmann
Workshop: Agency and Distribution Contracts, June 1993
and Law Faculty Training Institute II, June 1993

Report prepared by David Teichmann, as part of his post-assignment duties, which provides his comments and suggestions about the assignment and the CEELI program. Along with general praise for the CEELI program, Mr. Teichmann provides several comments including: suggestions and observations about translations, course length, scheduling, marketing the program, site selection, providing speakers with a profile of attendees, questionnaires, providing primary materials to participants, informal events for the speaker, attendee fees, common accommodations, teaching techniques, and networking.

Country: Poland
Organization: CEELI
Type: Report
Title: Final Report of Liaison to Poland - Robert Stark
Workshop:

Mr. Stark provides his comments regarding the first year of the commercial law initiative in Poland. He chronicles the efforts and achievements of the program including: the commercial law center (the Foundation) in Warsaw, sponsored by the Polish Lawyer's Association, the Polish Bar Association, and the Chamber of Legal Advisors; the possibility that CEELI will assist with legislative and regulatory reform through the Foundation; the Commercial Law Center in Krakow; the development of productive relations with several ministries of government; several workshops; recruitment of a resident legal specialist to work for three months with the legal staff of the Foreign Department of the Ministry of Finance; and internships for young Polish lawyers to work in the United States. Given the present situation in Poland, Mr. Stark stresses the need for flexibility and spontaneity in program goals. He also emphasizes that these goals should not be dictated by abstract Washington policy, but rather by the "real needs of Poland." He also warns against supporting the Polish Lawyers Association at the expense of relations with other legal organizations.

Country: Poland
Organization: IDLI
Type: Workshop Material
Title: Training Workshop on "Advising Enterprises in Financial Difficulty"
Workshop: Advising Businesses in Financial Difficulty, October 1993

The materials in the handbook constituted the working documents for the five day legal training workshop on "Advising Enterprises in Financial Difficulty." The contents of the handbook include sections on: Schedule/Objectives/Visiting Instructors; German Law and Practice; French Law and Practice; American Law and Practice; and Supplementary Materials.

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Country: Poland
Organization: IDLI
Type: Workshop Report
Title: Advising Enterprises in Financial Difficulty
Workshop: Advising Businesses in Financial Difficulty, October 1993

The workshop report includes sections on: Workshop Objectives; Workshop Overview; Summary of Proceedings; Visiting Instructors (contact information and cameo c.v.) and Participants (names and contact information). The "workshop objectives" section precisely states for the instructor what the participants should be able to do at the end of the course and gives the participants a means to monitor progress. For example, at the end of this workshop the participants should be able to:

1. Identify elements of German, French and U.S. law or practice which may have practical application in Poland.
2. Describe the character and use of the legal instruments provided to the participants in the workshops.
3. Draft a checklist of practical steps a lawyer can take to assist an enterprise in its effort to avoid bankruptcy.
4. List the "early warning signals" which indicated that an enterprise is encountering financial difficulties.
5. Make suggestions for improvement of the applicable Polish legal framework.

Country: Poland
Organization: CLDP
Type: Workshop Materials
Title: Principles of Government Contracting in Poland
Workshop: Procurement Workshop, November 1993

This binder is one of two documents that formed the basis of the training course. (The other document, not provided, is the Facilitators Manual which contains guidance, materials, and handouts required for facilitating the course.) The course was prepared by the U.S. Environmental Protection Agency, Region 3, with assistance from the International Institute, Graduate School, USDA. The binder contains sections on: The Philosophy of Government Contracting; The Language of Government Procurement; Government Contracting Overview; Specifications; Tendering, Two-Stage Tendering, and Evaluation of Offers; Competitive Negotiation, Request for Price Quotations, and Single Source Procurement; Contract Administration and Contract Types; Contract Termination; Standards of conduct for Government Employees; Proposed Polish Law on Public Procurement; Terms of Reference; Do's and Don't's for Contract Monitors; Glossary; and Sample United States Request for Proposals.

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Country: Regional
Organization: CEELI
Type: Workshop Materials
Title: Materials for Joint Venture Program
Workshop: Law Faculty Training Institute II, June 1993

This handbook contains sections including:

- A. Legal Framework for the Treatment of Foreign Investment, Volume II: Guidelines. A report to the Development Committee and Guidelines on the Treatment of Foreign Direct Investment, by the World Bank Group
- B. World Investment Report 1992, Transnational Corporations as Engines of Growth, by the United National Transnational Corporations and Management Division, Department of Economic and Social Development.
- C. Joint Ventures as a Form of International Economic Cooperation, by United Nations Centre on Transnational Corporations, 1988.
- D. Establishing Successful Joint Ventures in Developing Nations: A CEO's Perspective, by Anthony J.F. O'Reilly, in The Columbia Journal of World Business, v. 23, no. 1 (Spring 1988) pp. 65-81. and, Joint Ventures as Self-Organizing Systems: A Key to Successful Joint Venture Design and Implementation, by P. Lorange and G. Probst, in The Columbia Journal of World Business, v. 22, no. 2 (Summer 1987) pp. 71-87.
- E. Case Study: International Joint Ventures - Drafting A Memorandum of Understanding between The National Semiconductor Group of the National Republic of Quallama and Invention Technology International, Inc. of the United States of America, prepared by Javade Chaudhri, Winston & Strawn, 1400 L St. NW, Washington, DC 200005
- F. Draft: Statutes for the ABC "company" (a private company with limited liability under Januzian law.)
- G. Draft: Joint Venture Shareholders Agrcement
- H. Draft: Distributor Agreement between U.S. Computer Manufacturer Inc. and Overseas Computer Distribution Limited.
- I. End-User Software Sublicense Agreement (Sample)
- J. Legal Due Diligence Checklist
- K. International Commercial Arbitration, prepared by M. Javade Chaudhri and Yusuf Giansiracusa, including sections on: Negotiating the Arbitration Agreement: Elections and Considerations; Conduct of the Proceedings; and Recognition and Enforcement of

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Foreign Arbitral Awards.

- L. Joint Venture Agreement: Sample for Manufacturing Joint Venture (Mexico)**
- M. Memorandum of Understanding: Sample for Manufacturing Joint Venture (Mexico)**
- N. Shareholders Agreement: Sample for Manufacturing Joint Venture (Mexico)**

Country: Regional
Organization: CEELI
Type: Workshop Materials
Title: How to Draft an International Joint Venture Agreement
Workshop: Law Faculty Training Institute II, June 1993

This handbook contains presentations, articles and documents, including:

- 1. Preparation of International Joint Venture Documentation, by David W. Ambrosia**
- 2. Drafting a Joint Venture Agreement to be Carried out in France, by Philippe Xavier-Bender**
- 3. International Joint Ventures, by Hector Rojas V.**
- 4. Form of Negotiated Joint Venture Agreement Relating to a Partnership Joint Venture in the United States**
- 5. Form of Partnership Agreement for Joint Venture in the United States**
- 6. Form of Joint Venture Agreement for a Corporate Joint Venture in the United States**
- 7. Form of Joint Venture Agreement for a Joint Venture in France**
- 8. A Mining Joint Venture Agreement**
- 9. A Manufacturing Joint Venture Agreement**
- 10. A Memorandum of Understanding and Shareholders' Agreement**

Country: Regional
Organization: CEELI
Type: Workshop Materials
Title: Real Property Law and Practice - Karl B. Holtzschue
Workshop: Law Faculty Training Institute II, June 1993

This handbook contains chapters on: Brokers; Contract Formation; Descriptions and Surveys; Warranties and Titles; Executory Period; Remedies for Seller's Breach of Contract; Remedies for Purchaser's Breach of Contract; Title Search and Title Insurance; Tenanted Buildings; Transfer Taxes; Closing; Financing; Income Taxation; Environmental Matters; and Advanced Financing and Bankruptcy.

Country: Regional
Organization: CEELI
Type: Workshop Materials
Title: Real Property Law and Practice - Kathleen Smalley
Workshop: Law Faculty Training Institute II, June 1993

This handbook contains chapters on: Present Value Problems; Introduction to Appraisal Report; Sample Projections; Appraisal Problem; Tax/Partnership Problem; Sample Partnership Allocations; Considerations involved in Choice of Entity; Form of Residential Lease; Annotated Office Lease.

Country: Bulgaria
Organization: CEELI
Type: Commentary
Title: Analysis of Three Interrelated Bulgarian Domestic Trade Laws: Chambers of Trade and Industry Act, Commodity Exchange Act, Domestic Trade Regulation Act

Workshop:

This book contains CEELI's comments on three Bulgarian domestic trade laws. The analysis is comprised of comments from a group of international trade and commodities practitioners, including ones with experience working in the European Community. The book contains sections including: Summary of Comments Concerning the Bulgarian Domestic Trade Laws; List of Experts Providing Comments; Individual Comments; Chambers of Industry Act; Commodity Exchange Act; Domestic Trade Regulation Act; Budapest Commodity Exchange PROJECT 2000; and International Regulation of Derivative Markets, Products and Financial Intermediaries (by the (U.S.) Federal Regulatory Agency for Futures Trading).

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Country: Bulgaria
Organization: CEELI
Type: Concept paper prepared for the Government of Bulgaria
Title: Money Laundering - Definition and Control
Workshop:

This concept paper discusses "various money laundering issues to be considered by Bulgaria." The paper was prepared by a working group of experts in money laundering issues. It is intended to provide general information, not legal advice. Along with an introduction, executive summary, and note on assumptions, the text of the paper includes sections on: Working Definition of Money Laundering; Scope of Money Laundering Offense; Responsibilities of the Financial Community; Relationship Between Government and Financial Institutions; Enforcement Issues; Financial Privacy; Ancillary Considerations; Money Laundering and Economic Change in Bulgaria; and a Conclusion. Appendices include: 1988 U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime; The Report on Financial Action Task Force on Money Laundering, April 19, 1990; The E.C. Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering; The Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Related Offenses of the Organization of the American States; The Statement of Principles Concerning "Prevention of Criminal Use of the Banking System for the Purposes of Money Laundering" (the "Basle Statement"); and Currency Transaction Report Form 4789.

Country: Bulgaria
Organization: CEELI
Type: Workshop Report
Title: CEELI Report: Workshop on Draft Bulgarian Copyright Law
Workshop: Copyright Law Workshop, October 1992

This book contains material related to the CEELI workshop on copyright law held in Sofia from October 13 to 15, 1992. Sections include: an agenda for the meeting; Workshop Report and Participant Evaluations; Materials Provided to CEELI Participants; CEELI's Analysis of Bulgaria's Act on Copyright and the Rights Related to Copyright. The CEELI analysis is a compilation of individual comments from a group of copyright law experts. Appended to the analysis are: a complete set of individual comments; relevant background information concerning copyright law; and a copy of the draft law.

Country: Bulgaria
Organization: CEELI
Type: Concept Paper
Title: A Concept Paper on Securities Regulation for Bulgaria
Workshop:

This concept paper was prepared for CEELI by a working group consisting of law school professors and practitioners. The paper is intended to introduce policymakers and draftspersons to the principal policy concerns, and the policy option, relating to securities laws. It provides general information, not legal advice. Appended to the concept paper are: "The Legal Framework of the Securities Industry in the E.C. under the 1992 Program," by David Reid and Andrew Ballheimer; "Recommended Design for a Securities Law," by William J. Williams, Jr.; Council Directives of the European Community; The U.S. Securities and Exchange Commission Regulations; William J. Williams, Jr.'s "A Securities Law for an Emerging Capital Market -- A Proposal (26 June 1990); Quebec Securities Act; Proposals for a Securities Market Law for Canada; and The Polish Law of Public Trading in Securities and Trust Funds, 1992.

Country: Bulgaria
Organization: CEELI
Type: Commentary
Title: Analysis of Bulgaria's Act on Copyright and the Rights Related to Copyright
Workshop:

This book contains CEELI's comments on the draft Act on Copyright and the Rights Related to Copyright. Included in the document are: Summary of Comments on Bulgaria's Act on Copyright and the Rights Related to Copyright; the list of analysts providing written comment and their individual comments; Berne Convention for the Protection of Literary and Artistic Works; Universal Copyright Convention as Revised at Paris on 24 July 1971; United States - Bulgaria Investment Treaty; EC Council Directive of 14 May 1991 on the Legal Protection of Computer Programs; and the Act on Copyright and the Rights Related to Copyright.

Country: Bulgaria
Organization: CEELI
Type: Commentary
Title: Issues in Bulgarian Law - The Treatment of Non-Monetary Contributions - A Problem for Investors in Bulgaria
Workshop:

This pamphlet addresses the problem for investors arising from the Bulgarian Law's treatment of non-monetary contributions to commercial firms. A working group sponsored by CEELI was set up to review the treatment of this issue in several European countries. The review concluded that procedures for valuing non-monetary contributions need not impose the kinds of obstacles raised by the Bulgarian legislation. The pamphlet presents a proposal resulting from the review, with the purpose of educating and stimulating debate.

Country: Bulgaria
Organization: CEELI
Type: Commentary
Title: Issues in Bulgarian Law - Law on Economic Activity of Foreign Persons and on Protection of Foreign Investment

Workshop:

This pamphlet is a translation and commentary on the Bulgarian Law on Economic Activity of Foreign Persons and on Protection of Foreign Investment. The purposes of the pamphlet are to: 1) accurately convey the meaning of the Bulgarian legal terminology to those more familiar with the Anglo-Saxon system; and 2) provide the background and explanation needed by a Western observer to understand the context in which the Law arises.

Country: Bulgaria
Organization: CEELI
Type: Workshop Report
Title: CEELI Report: Workshop on Draft Bulgarian Bankruptcy Law
Workshop: Bankruptcy Workshop, February 1992

Included in this tome are: Workshop Agenda, List of Participants and Historical Background; a press release on the Workshop; material on Bulgarian bankruptcy law; Secondary Bankruptcy Materials Supplied to CEELI Participants; an Analysis of the Draft Bulgarian Bankruptcy Law and Draft Law on the Protective *Concordat*.

Country: Bulgaria
Organization: CEELI
Type: Commentary
Title: Analysis of the Bulgarian Draft Law on Banks and Crediting Activity
Workshop:

This report consists of the analysis of the International Banking and Finance Committee of the International and Law Practice Section of the American Bar Association, and individual comments from Russell J. Bruemmer and Eugene L. Stewart. American statutes and codes are enclosed in Appendix A. The draft law is in Appendix B.

Country: Bulgaria
Organization: CEELI
Type: Commentary
Title: Analysis of the Draft Bulgarian Bankruptcy Law and Draft Law on the Protective *Concordat*

Workshop:

This book contains the same information as in the last section of the workshop report on Bulgarian Bankruptcy Law (above).

Country: Bulgaria
Organization: CEELI
Type: Commentary
Title: Comments on the Draft Bulgarian Patent Law
Workshop:

This report contains an analysis of the Bulgarian draft Patent Law. The analysis draws heavily on the assistance of the ABA's Section on Patent, Trademark and Copyright Law. The report's three main sections include: a summary report highlighting the major comments and suggestions of the individual analysts; copies of the individual analyses submitted by specialists from the ABA's Patent Law Section; documentary materials describing the structure and functioning of the U.S. Patent Office; the Patent Law of Czechoslovakia; and an Extract from U.S.-Bulgarian Trade Agreement.

Country: Bulgaria
Organization: CEELI
Type: Commentary
Title: Analysis of Bulgaria's Draft Decree on A Uniform System of Tax Administration and Proposed Legislation on the Supreme and District Courts of Auditors - Provided to the Prime Minister and Minister of Finance of the Republic of Bulgaria

Workshop:

The comments in this report were provided at the request of a Senior Advisor to the Prime Minister of Bulgaria as part of on-going follow-up efforts to the three CEELI workshops held in Bulgaria dealing with judicial restructuring and the draft Constitution. As is the format in other commentaries, this report consists of a summary of comments and suggestions regarding the legislation, individual comments received from analysts, and documentary materials, including copies of relevant portions of the U.S. tax law.

Country: Bulgaria
Organization: CEELI
Type: Trip Report
Title: "You Listened You Cared" - William D. Meyer, 9/92
Workshop:

This is Mr. Meyer's report on "Year One of the CEELI Liaison Mission to Bulgaria." Mr. Meyer served as CEELI's first liaison in Bulgaria. Along with an in-depth description of his "memories," Mr. Meyer provides several thoughtful "reflections" on and "observations" made during his stay in Bulgaria. In addition, he gives a thorough listing and description CEELI's efforts and accomplishments in Bulgaria during his stay.

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Country: Bulgaria
Organization: IDLI
Type: Workshop Report
Title: Joint Venture and Franchising Agreements
Workshop: Joint Venture and Franchising Agreements, January 1993

This report provides a list of workshop objectives, a workshop overview, a summary of proceedings, a list of visiting instructors, and a list of participants. As in other IDLI workshop reports, this report gives a clear listing of workshop objectives so that instructors and participants can assess progress. The listing of instructors gives contact information and cameo c.v.s. The listing of participants gives names and contact information.

Country: Bulgaria
Organization: IDLI
Type: Workshop Report
Title: International Commercial Arbitration and Alternative Dispute Resolution
Workshop: International Commercial Arbitration and Alternative Dispute Resolution Workshop, April 1993

This report provides a list of workshop objectives, a syllabus, a summary of proceedings, a list of visiting instructors, and a list of participants. As in other IDLI workshop reports, this report gives a clear listing of workshop objectives so that instructors and participants can assess progress. The listing of instructors gives contact information and cameo c.v.s. The listing of participants gives names and contact information.

Country: Lithuania
Organization: CEELI
Type: Workshop Materials
Title: Training Workshop on International Sale of Goods Contracts Materials
Workshop: International Sale of Goods Contracts Training Workshop, 1/93

Included in this booklet are the workshop materials for the Training Workshop on International Sale of Goods Contracts.

Country: Lithuania
Organization: CEELI
Type: Workshop Materials
Title: Training Workshop on International Sale/Purchase of Goods Contracts
Workshop: International Sale of Goods Contracts Training Workshop II, 3-4/93

Included in this booklet are: a seminar agenda; "Teaching Materials and Hypotheticals for Sessions I, II, III, and IV;" sample purchase order with explanatory comments; sample forms; and "additional information."

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Country: Lithuania
Organization: CEELI
Type: Commentary
Title: Analysis of the Draft Charter for the Vilnius International Commercial Arbitral Tribunal

Workshop:

Contained in this document is the analysis of a group of attorneys and professors with expertise in arbitration law. Also included are: a list of those providing commentary; the full text of their comments; arbitration rules for the UN, ICC and AAA; the EC Convention on International Arbitration; Rules of the Arbitration Institute of the Stockholm Chamber of Commerce; and the draft charter.

Country: Lithuania
Organization: CEELI
Type: Commentary
Title: Analysis of Two Draft Proposals on Foreign Investment for Lithuania

Workshop:

This document provides a summary of comments concerning Lithuania's competing draft laws on foreign investment. The experts who provided commentary and their comments, the two draft laws, the existing law, and relevant background information are provided in the appendices.

Country: Lithuania
Organization: IDLI
Type: Workshop Report
Title: Negotiating Techniques and Joint Ventures
Workshop: Negotiating Techniques and Joint Ventures Workshop, 4/93

This report provides a list of workshop objectives, a workshop overview, a summary of proceedings, a list of visiting instructors, and a list of participants. As in other IDLI workshop reports, this report gives a clear listing of workshop objectives so that instructors and participants can assess progress. The listing of instructors gives contact information and cameo c.v.s. The listing of participants gives names and contact information.

Country: Lithuania
Organization: IDLI
Type: Workshop Report
Title: Sale of Goods, Shipping and Insurance
Workshop: Sale of Goods, Shipping and Insurance Workshop, 11/93

This report provides a list of workshop objectives, a workshop overview, a summary of proceedings, a list of visiting instructors, and a list of participants. As in other IDLI workshop reports, this report gives a clear listing of workshop objectives so that instructors and participants can assess progress. The listing of instructors gives contact information and cameo c.v.s. The listing of participants gives names and contact information.

Country: Lithuania
Organization: CEELI
Type: Trip Report
Title: Reports and Materials of CEELI Legal Specialist to Lithuania Ministry of Economics on Bankruptcy Issues, Oct-Dec 1993

Workshop:

This report contains the memoranda written by Arlene Elgart Mirsky during her tour as Legal Specialist to Lithuania Ministry of Economics on Bankruptcy Issues. Also included are several "exhibits" and supporting documents.

Country: Lithuania
Organization: CEELI
Type: Trip Report
Title: Final Report of Legal Specialist to Lithuania Ministry of Finance

Workshop:

This report is the "final report" of Emily Altman, Legal Specialist to the Lithuanian Ministry of Finance from May through August 1993. Ms. Altman consulted with the staff of the Ministry on matters relating to credit agreements with international lending organizations as well as commercial banks. The report is a summary of her experiences as well as an appraisal of the difficulties faced by the Ministry and her recommendations toward their resolution.

Country: Lithuania
Organization: CEELI
Type: Trip Report
Title: Final Report of Legal Specialist to Lithuania Ministry of Foreign Affairs

Workshop:

This is the "Final Report" of Kenneth Vandavelde, CEELI Legal Specialist to the Ministry of Foreign Affairs from June through July 1993. Mr. Vandavelde worked with the staff of the Ministry on issues relating to bilateral investment treaties. Mr. Vandavelde provides a summary of his experience, appraisal of the difficulties faced by the Ministry, and recommendations to aid in their resolution. The report is divided into two parts: Part I is an overview of the goals that were set for the trip and the accomplishments from his six weeks in Lithuania; and Part II is his daily journal of activities. Appendix A of the report is a Bilateral Investment Treaty Negotiating Manual authored by Mr. Vandavelde.

Country: Lithuania
Organization: CEELI
Type: Background/Management Material
Title: Memorandum from J. Alex Hartzler to Michael C. Dierdring - RE:
Country Liaison Reports

Workshop:

This memo contains Mr. Hartzler's suggestions regarding the future organization and reporting of the CEELI Lithuania Commercial Law Liaison files to facilitate internal and external evaluations of CEELI programs and provide for easier access to information. Attached to the memo is a listing of "all conferences, meetings, lectures and seminars conducted by John Zerr as part of his official duties with CEELI. Other participants and organizers are noted for each event respectively."

Country: Bulgaria, Lithuania, Regional
Organization: CEELI
Type: Impact Assessments
Title: Description of any country-specific impact of assistance, e.g., legislation or follow-up activities undertaken.

Workshop:

These evaluations were provided by CEELI at the request of USAID to aid in the "Assessment of the Commercial Law Component of the Competition, Law and Regulations Project in Central and Eastern Europe." The Poland assessment is not in attached to this packet.

Country:
Organization: CLDP
Type: Background/Management
Title: Interagency Agreement Between the Agency for International Development and The Department of Commerce.

Workshop:

This packet contains the Interagency Agreement Between the Agency for International Development and The Department of Commerce. Annex A to this document is the CLDP "Program Description" which gives the background, program rationale, description of assistance activities, and country specific objectives and tasks of the CLDP program. Also attached are the CLDP "Budget for the Fifteen Month Period January 1993-March 1994, Reallocation of Second Tranche of Funding Unobligated as of January 1, 1993, and Allocation of Third Tranche Funding," Standard Provisions, "Actual Expenditures for First 11 Months of Program and Projected Expenditures for Subsequent 15 Months," "Home Office Summary Budget for the Period January 1, 1993, through March 31, 1994," and "Country Summary Budgets for the Period January 1, 1993, through March 31, 1994."

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Country:
Organization: CEELI
Type: Background Material
Title: CENTRAL AND EAST EUROPE LAW INITIATIVE "CEELI" A
Project of the American Bar Association

Workshop:

This two page document provides a description of CEELI and CEELI programs and "Comments about CEELI." Also provided are lists of members of the CEELI Executive Board and Advisory Board.

Country:
Organization: CEELI
Type: Background Material
Title: CENTRAL AND EAST EUROPE LAW INITIATIVE "CEELI" Sister
Law School Program

Workshop:

This two page document provides a description of the CEELI Sister Law School Program and "Comments of CEELI Sister Law School Program Participants." Also provided are lists of members of the CEELI Executive Board and Advisory Board.

Country: Lithuania
Organization: CEELI
Type: Monthly Status Report
Title: Monthly Status Report, March 1994

Workshop:

This is a memo from Mark Segal to John Cloutier describing: Recent Meetings and Activities; Technical Legal Assistance Projects; Activities of Legal Specialists; Activities of Legal Specialists; Delivery of Materials; Sister Law School Program; Examples of Program Impact; Cooperation with Other Organizations; and Upcoming Travel.

Country:
Organization: CLDP
Type: Folder of Background Material
Title:

Workshop:

Contained in this folder are: a list of "Commercial Law Development Program Country-by-Country Record of Training and Technical Assistance;" a description of CLDP and its workshops and other training programs (e.g., international project financing workshop, negotiation and documentation of international joint ventures workshop, government ethics workshop, and public procurement course); and guidelines on conflict of interest and standards of conduct for resident advisors.

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Country:
Organization: CEELI
Type: Background Material
Title: CENTRAL AND EAST EUROPE LAW INITIATIVE "CEELI"
Commercial Law Reform Project

Workshop:

This one page handout gives brief descriptions of: Commercial Law Centers; Long-Term Training; Resident Liaisons/Legal Specialists; Legal Assessments; and Technical Legal Assistance Workshops.

Country:
Organization: CEELI
Type: Management Materials/Memo
Title: Memo to: Interested Applicants for the CEELI Liaison/Legal Specialist Program

Workshop:

This packet consists of a memo describing the CEELI Liaison/Legal Specialist Program; A list of "Commonly Asked Questions About the Liaison/Legal Specialist Program" and Answers; an Application for the CEELI Liaison/Legal Specialist Program; a Questionnaire for those interested in providing technical legal assistance to the countries of the CEE and FSU; description of CEELI programs; Conflict of Interest Guidelines; a Disclosure Form; a Memorandum of Understanding; a letter from William Meyer updating CEELI in Washington on literature, seminar, legislative drafting, and project issues; and a memo from Emily Altman to CEELI re: Specialist Visit - Ministry of Finance/Lithuania.

Country:
Organization: CEELI
Type: Folder of Background Material
Title:
Workshop:

This folder provides background material on the CEELI project. In addition to background material/handouts described above, the folder contains a listing (as of April 4, 1994 and as of March 15, 1994) of technical legal assistance workshops, legal training seminars, law faculty training program seminars, draft law assessments/concept papers, resident liaisons and specialists, sister law school program participants and programs; and other projects. Two brochures are also included in the folder; one is the *CEELI Update* and the other is a "marketing document" on CEELI 1990-1992.

Country:
Organization: CLDP
Type: List of Contacts
Title: RE: List of Documents Being Provided
Workshop:

Attached to Susan Gurley's memo to Alexandra Braginski are lists of: CLDP Assistance Providers (also in the three-ring binder) and Recipients of Training or Other Assistance for all countries (copy of Poland, Lithuania and Bulgaria lists are in the three-ring binder).

Country:
Organization: USAID
Type: Management Material
Title: PIO/T
Workshop:

This is the PIO/T and Scope of Work for the Mid-Course Assessment of the Commercial Law Component of the Competition Policy, Laws and Regulations Project.

Country:
Organization: ABA/USAID
Type: Management Material
Title: PIO/T Original
Workshop:

This document is the PIO/T, budget and program description of the CEELI project.

Country:
Organization: ABA/USAID
Type: Management Material
Title: PIO/T Original #1
Workshop:

This document contains the PIO/T, fiscal data, grant schedule, budget narrative, and program description for the CEELI project.

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Country: Poland
Organization: U.S. Embassy/Poland
Type: Background Material
Title: United States SEED Act - Assistance Strategy for Poland 1993 - 1995
Workshop:

Country: Lithuania
Organization: U.S. Embassy/Vilnius
Type: Background Material
Title: United States SEED Act - Assistance Strategy for Lithuania 1993 - 1995
Workshop:

These two documents contain the United States Assistance Strategies for Poland and Lithuania.

Country: Lithuania
Organization: CLDP
Type: Workshop Material
Title: Government Ethics Workshop
Workshop:

This document (in both Lithuanian and English) contains the seminar agenda, biographies of lecturers, outlines of presentations, a description of U.S. government structure and employment system; a survey; a glossary of ethics terms; and hypothetical scenarios.

Country: Lithuania
Organization: CEELI
Type: Report
Title: Report of CEELI Judicial Reform Specialist - William H. Walters
Workshop:

In his report, Mr. Walters summarizes his in-country activities and comments on some rules of law that are "ripe for follow up and development." He also makes suggestions for future CEELI activities.

Country: Lithuania
Organization: CEELI
Type: Report
Title: Report of CEELI Legal Specialists to the Ministry of International Economic Relations - William T. D'Zurilla
Workshop:

Mr. D'Zurilla summarizes his activities while CEELI resident advisor at the Ministry of International Economic Relations and makes suggestions regarding difficulties he had while in Lithuania.

Country: Lithuania
Organization: CEELI
Type: Report
Title: Report of CEELI Legal Specialists to the Ministry of International
Economic Relations - George Blow

Workshop:

Mr. Blow's "trip report" consists of his diary entries from October 26 to December 18, 1992. Diary entries consist mainly of schedule of day's events, provide little commentary.

ANNEX D

PERFORMANCE INDICATORS

The following performance indicators were developed prior to undertaking the field assessment. They were tested in the field and subsequently revised and incorporated into the illustrative "log frame" in Figure 1 presented in the final chapter of the report.

Indicators of increased individual capacity

- > Participants functioned at a clearly higher level than they did before training and progressed to more complicated commercial law activities.**
- > Participants used the skills or knowledge provided for their work.**
- > Beneficiaries increased their involvement in commercial law reform. Trainees or technical assistance recipients had significant involvement in lobbying for, drafting or otherwise supporting new legislation.**
- > Beneficiaries requested more specialized assistance.**
- > A participant improved his or her professional position using skills acquired in a training or technical assistance project.**
- > Local lawyers who participated in the training or technical assistance are now performing roles which were performed by the foreign specialist.**
- > The confidence level and decision-making ability of participants increased.**
- > Individuals are more willing to pay for training.**

Indicators of sustainable systemic impact on legislation

- > Technical suggestions helped legislative drafters to understand the function and role of a type of legislation**
- > Technical suggestions were adopted by the legislative drafters or used as a basis for developing new approaches by the relevant drafting committees**
- > Draft legislation incorporating the assistance provider's comments was discussed before the law making body**

Indicators of sustainable impact on institutions

- > The ability of a government department to administer current or new legislation improved (e.g. linkages, development of management skills, installation of improved information technology).**

- > The profile of local bar associations increased (e.g. increase in scope and/or quality of activities, membership, publications, organizational sophistication).
- > Technical suggestions were adopted and led to an identifiable improvement in the implementation of laws and the effectiveness of legal institutions.
- > Commercial law organizations were developed.
- > The appropriateness in level of participants sent to training by an institution increased.
- > Local institutions are more willing to pay for training.
- > The assistance resulted in decreased transaction costs.
- > The substance of the project is being carried on by the recipient after the end of the project.
- > The need for outside assistance or support has decreased.
- > Operations are more timely and efficient.

Indicators regarding access to legal resource materials

- > Materials provided by the training or technical assistance are still being used.
- > Access to commercial law materials, domestic or relevant foreign, improved.

Demand

An increase in the overall demand for legal resource materials or more advanced or specialized training or technical assistance can be identified

Indicators regarding judicial activity

- > The judiciary's ability to handle issues addressed by the training or technical assistance (e.g. understanding of the issue in judicial decisions, number of cases addressing the issue) increased
- > Judgements on commercial law issues are now decided and enforced in a transparent and equitable manner

Alternative Dispute Resolution

The use of alternative dispute resolution procedures increased

Legal Education

Indigenous legal education was improved (e.g. increase in commercial law course offerings, changes in teaching method, increase in comparative element of courses)

ANNEX E

**LIST OF PERSONS INTERVIEWED
VILNIUS, LITHUANIA
(April 21 - April 30, 1994)**

Dangute Ambrasiene, President, Law Firm "Regija"

Reda Bagusinskiene, Project Management Specialist, USAID, Vilnius

Gintautas Bartkus, Attorney, Law Firm, Lideika, Petrauskas, Valiunas & Partners

Derek Blink, Programme Manager, Aid Coordination Unit, Ministry of Foreign Affairs

John Cloutier, USAID Representative

John Corrigan, CEELI, Commercial Law Liaison

Ramune Duleviciene, Director of Legal Program, Open Society Fund - Lithuania

Genovaite-Kazimiera Duskiniene, President, In-House Council

Dalia Foigt, Partner, Law Firm "Regija"

Vytas Groudys, Executive Director, Open Society Fund - Lithuania

**Lynn F. Guelzow, Competition Advisor to the Baltic States US Federal Trade
Commission**

Natalija Guseva, Chief Economist of Budget Department, Ministry of Finance, Vilnius.

Remigijus Jakutis, Attorney, Bar Association of Lithuania

Nicholas Janks, USAID Project Development Officer

Salomeja Jasinskaite, Head of the Research Team, New Economy Institute

Juozas Joksas, Head of Bankruptcy Department, Ministry of Economics

Raimundas Jurevicius, Attorney, Law Firm , Lideika, Petrauskas, Valiunas & Partners

Alina Kaledinskiene, Executive Director, Commercial Law Center

A. Krusna, Legal Department, Lithuania Government, Vilnius

Jorgen Lissner, UNDP Representative, Ministry of Foreign Affairs

L. Malijauskaite, Chief attorney of the Vilnius municipality

Jonas Masiokas, Consultant, Lithuanian Economic and Foreign Investment Development Agency

Stephanie M. Mcaree, Economist, Antitrust Division, US Department of Justice, Vilnius

Valentinas Mikelenas, Dean of Law Faculty, Vilnius University

Vytautas Pakalniskis, Chairman of the Board, Lithuanian Economic and Foreign Investment Development Agency

Algimantas Pavilionis, Head of Personnel, Seimas

Gintaras Pukas, Founder of the Commercial Law Center

Pranas Vytautas Rasimavicius, Judge, Constitutional Court

Al Rimas, Economic Officer, US Embassy

Mark Evan Segal, CEELI Rule of Law Liaison

Vytautas Sinkevicius, Director, Legal Department

Ruta Skyriene, Head of State Debt Management Division

Stasys Staciokas, Judge, Constitutional Court

Rimantas Stanikunas, General Director, State Price and Competition Office

Kestutis Stungys, Lithuanian Lawyers Association

Eugenija Sutkiene, Attorney, McDermott, Will & Emery

Vidmontas Vegelis, Deputy Director, Legal Department

Kestutis Virketis, Advisor, Legal Department

Marija Vrubliauskiene, Consultant, Lithuanian Economic and Foreign Investment Development Agency

Darius Zabiela, IDLI in-country Representative

R. Zabuliene, World Bank representative

**LIST OF PERSONS INTERVIEWED
IDLI, ROME
(May 26 - May 27, 1994)**

Gilles Blanchi, Acting Director, IDLI

Pascuale Ferraro, Deputy Director and Head of Administration, IDLI

William T. Loris, Deputy Director and Project Manager, IDLI

Barbara Dillon Hillas, IDLI

Flavia Grassi, Admissions Officer, Anglophone Dept., IDLI

Marie Helene Canale, Admissions Officer, Francophone Dept., IDLI

Silvia Lagana, Logistics Coordinator

Fiamma Spinelli, Logistics Coordinator

David McGuinty, Program Legal Counsel

Galina Davis-Konandreas, Law Librarian

**LIST OF PERSONS INTERVIEWED
POLAND
(May 30-June 4, 1994)**

Wanda Barc, Chief Program Officer, Department of Air and Land Protection, Ministry of Environmental Protection, Warsaw

Dr. Boguslawa Bednarczyk, Department of Political Science, Jagiellonian University, Krakow

Julius Bieskowski, Ministry of Finance

Daniel Bosco, CEELI Liaison-Poland

Dariusz Czajka, President, Polish Lawyers Association

Michael Davies

Carl R. Duisberg, Project Development/Economic Restructuring, USAID/Poland

Ronald A. Dwight, Director, IRIS-Poland Project

Joan H.N.J. Edward, Senior Commercial Officer, US Embassy, Warsaw

Beate Gessel, Attorney at Law, former IDLI Country Representative

Marke M. Gul, Towarzystwo Doradztwa Inwestycyjnego

Andrzej Kacperski, Deputy Chairman, Krakow District Association of Patent Attorneys, Krakow

Dariusz Koba, Office of Public Procurement

Grzegorz Kolarski, Equilibrium, Krakow (attended CEELI franchising seminar)

Leslaw Kostorkiewicz, Consultant, Unton & Williams

Wojciech Kwiatkowski, Polski Bank Rozwoju, S.A., Poland (IDLI seminar participant).

Al Kwitnieski, Commercial Law Liaison, CEELI, Krakow

Kidzinski Marek, Procurement Office

Professor Rysard Markiewicz, Director, Institute of Inventiveness, Jagiellonian University, Krakow

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John A. Matel, US Consul, Warsaw

Piotr Nowaczyk, Attorney at Law, Salans Hertzfeld & Heilbronn

Prof. Jozef Okolski, Dean, Faculty of Law and Administration, Warsaw University, Warsaw

Kristyna Sayna Paliwoda, Member of Board of Polish Bar Association

Katarzyna Podlewska, Department of Air and Land Protection, Warsaw

Donald Pressley, USAID Representative - Poland

Ewa Purzycka,

Maria Pyra, Ministry of Ownership Changes

Paulina Rogowska, Project Specialist, USAID, Warsaw

Stanislaw Rymar, Director, Lawyers Research Center

Tadeusz Skoczny, Deputy Dean, Faculty of Management, University of Warsaw

Andrzej Szczepek, Patent Office, Poland

Maria Szewczyk, Vice Dean, Faculty of Law, Jagiellonian University, Krakow

Adam Rafal Tomczynski, Polish Lawyers Association

Iwona Walczykowska-Blichewicz, Polish Lawyers Association

Grzegorz Warzocha, Legal Advisor, IDLI Country Representative - Poland

Anna Wojciechowska, Institute of Inventiveness, Jagiellonian University, Krakow, (IDLI teacher)

**LIST OF PERSONS INTERVIEWED
UNITED STATES**

Michael C. Diedring, Deputy Director, ABA/CEELI

Mark S. Ellis, Executive Director, CEELI, Washington, DC

**Nmamdi Kalu Ezera, Senior Project Coordinator, Commercial Law Reform Project, CEELI,
Washington, DC**

Robert Gordet, former CEELI Commercial Law Liaison in Kankow

Susan Gurley, Deputy Director, Commercial Law Development Program

Kamala H. Mohammed, Liaison Project Director, CEELI, Washington, DC

Kim Parker, Program Director-Sister Law School Program, CEELI, Washington, DC

**Linda A. Wells, Director, Commercial Law Development Program, US Department of
Commerce**