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IDLI IN TRANSITION: STRATEGIES FOR SUSTAINABLE DEVELOPMENT

Final Report

U.S. Agency for International Development

Prepared for: Bureau for Global Programs, Center for Economic Growth, Office of Economic and Institutional Reform

Prepared by: Coopers & Lybrand, LLP

Sponsored by: Private Enterprise Development Support Project III
Contract No. PCE-0026-C-00-3030-00
Task Order No. 14
Prime Contractor: Coopers & Lybrand, LLP

June 1995

Coopers
&Lybrand

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The authors wish to express their thanks to IDLI for providing us with the opportunity to work with its staff in the development of a self-sufficiency strategy. We are particularly grateful for the invaluable assistance provided by Ann Dehlin, Administrative Officer, Stephanie Lettieri, Executive Assistant/Accounts, Laleh Brown, Executive Assistant/Grants, and Fiamma Spinelli, Logistics and Evaluation Officer.

William Fisher
Kenneth A. Lanza

ii. ACRONYMS AND ABBREVIATIONS

ADB	Asian Development Bank
AFDB	African Development Bank
CDIE	Center for Development Information and Evaluation
DG	Directorate General
EU	European Union
GOI	Government of Italy
GOUS	Government of the United States
IDB	Inter American Development Bank
IFC	International Finance Corporation
IDLI	International Development Law Institute
LAC	Latin America/Caribbean
PLC	Program Legal Counsel
PMG	Policy Management Group
PVO	Private Voluntary Organization
SPG	Strategic Plannning Group
SPP	Strategic Planning Process
USAID	United States Agency for International Development
WB	World Bank

iii. EXECUTIVE SUMMARY

PART I: BACKGROUND

A. The Organization

IDLI was founded in 1983 as a not-for-profit private voluntary organization (PVO). The mission of the organization was to provide training to lawyers from developing countries in subjects relevant to the development process. Since its founding, IDLI has provided training both in Rome and in the field to more than 3,700 participants from 150 countries. In Rome, IDLI conducts 12-week resident courses and a number of seminars each year which deal with a variety of topics related to law and development. In the field, IDLI conducts shorter courses, characterized as Training Workshops. While Africa was the early focus of the organization, its in-country training has also been given in Asia, Latin America and Central and Eastern Europe. A significant number of course participants are women lawyers from developing countries. During the past year or two, IDLI has begun to diversify its product mix by providing advice and consultation to kindred institutions.

In 1991, with ratification by most of the signatory governments, IDLI became a recognized intergovernmental organization. In 1994, the Italian Parliament ratified a "Headquarters Agreement" with the Government of Italy (GOI), thus providing certain host country privileges and immunities. As an accredited international organization, IDLI has succeeded in attracting a number of governments as members.

IDLI is governed by a Board of Directors and an Assembly. The Board is self-appointing for terms of three years. It meets annually and is composed principally of prominent lawyers, jurists and academicians. The Assembly consists of representatives of IDLI's member governments. It meets every three years. The Assembly is authorized, inter alia, to overturn decisions of the Board of Directors. Member governments are not legally required to support IDLI financially, but most of the industrial country members have provided both project and core support.

Initially funded by a grant from The United States Agency for International Development (USAID), IDLI's revenues come from donors in the form of restricted and unrestricted grants and fees for services. Most of these contributions come from multilateral and bilateral development assistance agencies, though there has been limited support from private foundations and corporations. USAID has contributed to the organization annually since its founding, and currently is among its largest donors. Since 1983, IDLI's revenue has grown to approximately $4.7 million in 1994. Expenses have grown to approximately $3.6 million in 1994.

In 1986 IDLI established a General Endowment Fund using the surplus of revenue over expenses. The Fund currently stands at approximately $3 million. The organization has a staff of 32.

B. Rationale for the Study

During the 1980s, donor funding was comparatively abundant and "institution-building" was viewed as an integral and necessary component of the development process. IDLI has been a beneficiary of this institutional development mindset. However, the decade of the 1990s has witnessed increasing reluctance by the donor community to support core institutional expenses. IDLI is facing increased competition as legal training services are developed by other organizations eager to meet this demand, especially in Eastern Europe and Russia. This increased demand for services, combined with the need for bilateral, multilateral and host county institutions to respond rapidly, is structuring a new paradigm for the delivery of development assistance.

Faced with declining budgets, an increasing demand upon limited resources, and choices among price-competitive service providers, donor funding priorities are shifting away from core investments in institutions to those activities and programs which can readily demonstrate immediate transfer of knowledge, technology and application for results. Unrestricted grants to support core operational expenses are becoming increasingly more difficult for donors to justify and for grantees to obtain. This shift in donors' operational and financing strategy is also altering the nature and scope of the relationship between prospective donors and expectant recipients. One direct consequence for IDLI is that many of its donors have reduced or are in the process of considering the reduction of grant core funding. Against this background, IDLI asked USAID for help in developing a strategy and action plan to facilitate the organization's adjustment to this new paradigm in development assistance and allow it to continue to provide and expand its services.

C. Methodology

Through Coopers and Lybrand L.L.P., prime contractors for the Private Enterprise Development Services (PEDS) project, USAID provided the services of two consultants, who travelled to Rome for intensive discussions with IDLI senior management, staff and members of the Board of Directors. These discussions focused on a review of IDLI's mission and programs, and development of objectives, a strategic platform, and a series of implementation actions within the context of an ongoing process of strategic planning for sustainable development.

The consultants' findings and recommendations are presented within a report structure which poses three questions: Where Are We Now?; Where Do We Want to Be?; and How Do We Get There?. Their report is intended to stimulate an internal and continuously iterative process of strategic planning, implementation of sustainability initiatives, consistent monitoring and measurement of programmatic and financial performance, and individual staff participation and accountability.

D. What is Sustainable Development?

The Report defines Sustainable Development as an organization's ability to continue to finance and deliver services despite shifts and vicissitudes in patterns of donor involvement. Typically, sustainable development is achieved by reducing financial volatility through planned diversification of revenue sources, development of innovative funding mechanisms, creation of market-led programs and services, and rigorous programs of cost containment.

PART II. WHERE IS IDLI NOW?

The Report concludes that IDLI is not now in crisis -- an analysis of its finances reveals a healthy and dynamic organization. However, failure to respond to the new paradigm in donor thinking in a systematic and planned manner could easily result in crisis during the next few years. Both unrestricted and restricted core funding has already begun to decline, with most major contributors, including Italy and the US, substantially reducing or eliminating their contributions. Funds to finance the costs of course participants from abroad are becoming far more difficult to access. Both multilateral and bilateral development assistance agencies, themselves faced with serious budget reductions, are now more likely to deploy scarce resources in the form of project funding, i.e. contracting for specific services in specific places at specific times.

PART III. WHERE DOES IDLI WANT TO BE?

A. IDLI's Mission

To more accurately reflect IDLI's current services and objectives, the Report suggests modifications of its Mission Statement. The suggested Mission Statement is as follows:

> **To provide the highest quality training, advisory and information services to assist lawyers, and those who work with lawyers, in developing countries and emerging market economies to contribute to democratization, legal reform and the rule of law.**

B. Objectives of Sustainable Development

The Report suggests that the following objectives flow from the above mission statement as it relates to the task of achieving sustainability over the next five years:

- to provide an increasing range of legal training and advisory and information services to participants from developing countries and emerging economies;

- to provide these services on a more global basis;
- to reduce financial risk by minimizing volatility through diversification of revenue sources;
- to generate revenue sufficient to increase IDLI's endowment fund to $15 million in order to reduce dependence on any single donor or class of donors and be able to cover operating expenses from endowment interest income;
- to adopt and monitor rational cost containment measures to limit the growth of expense while continuing to invest prudently in its future.

C. Strategic Platforms for Sustainable Development

To achieve these objectives, the Report suggests IDLI consider a more strategic and less ad hoc approach to its future development. The Report suggests the following strategic planks for IDLI's sustainability platform:

- proactively seek support from new sources of revenue, particularly corporations, foundations and consulting firms, in addition to continuing to pursue support from conventional donors;
- modify existing products and/or create new products to meet the demands of particular geographic areas or satisfy the interests of new and conventional groups of supporters;
- increase credibility in and access to new geographic markets by establishing or expanding working relationships with like-minded and respected indigenous organizations;
- increase access to new funding sources by building on and institutionalizing the "Friends of IDLI" concept;
- create and/or expand subcontracting relationships with major consulting firms;
- re-examine the role of the Board of Directors in the fund-raising area; and
- explore creative fund-raising mechanisms such as debt-for-training swaps to facilitate revenue generation from developing countries.

PART IV. HOW WILL IDLI GET THERE?

The Report suggests developing and implementing IDLI strategy through (a) initiating a formal process of Strategic Planning, (b) an analysis of costs by type of service or product line, and (c) recommendations for a range of actions, timing, budgeting, monitoring and evaluation, and responsibility and accountability. These recommendations appear under six headings: Strategic Planning; Business Development; Product Development; Human Resources/Management; Governance/Role of the Board; and Pricing of Services/Budgeting. The recommendations are presented and discussed in detail in Part IV of the Report, and are summarized in Part V.

A financial model which IDLI can manipulate to create a variety of revenue and cost scenarios is included with this Report. The model is displayed in Insert A of the Report.

PART I

BACKGROUND

A. THE ORGANIZATION

IDLI was founded in 1983 as a not-for-profit private voluntary organization (PVO) by its current Director, L. Michael Hager, and its two current Deputy Directors, Gilles Blanchi and William Loris. The mission of the organization was to provide training to lawyers from developing countries in subjects relevant to the development process. Since its founding, the staff has grown from three to 32. Housed in a succession of small offices from 1982 to 1992, IDLI moved to its present premises in November 1992. The current headquarters, which are rented on a 12-year concessionary lease basis from a religious organization, provides both office and classroom space. Since 1983, IDLI's revenue has grown to approximately $4.7 million in 1994. Expenses (including external programs) have grown to approximately $3.6 million in 1994.

In 1991, IDLI began to operate as an intergovernmental organization, when most of its member governments ratified its 1988 Establishment Agreement. In 1994, the Italian Parliament ratified a "Headquarters Agreement" with the Government of Italy (GOI). This status has resulted in a number of host country privileges and immunities. As an accredited international organization, IDLI has succeeded in attracting a number of governments as members. This group now includes Austria, the People's Republic of China, Egypt, France, Italy, the Netherlands, the Philippines, Senegal, Sudan, Tunisia and the USA. Member Governments are not required to support IDLI financially, but most have provided both core and project funding.

Initially funded by a grant from The United States Agency for International Development (USAID), IDLI's revenues continue to come from donors in the form of restricted and unrestricted grants and fees for services. Most of these contributions come from multilateral and bilateral development assistance agencies, though there has been limited support from private foundations and corporations. USAID has contributed to the organization annually since its founding, and currently is among its largest donors.

In 1986, IDLI established a General Endowment Fund using the surplus of revenue over expenses. The Fund, which financed IDLI's move to larger quarters in Rome, currently stands at approximately $3 million. Reaching $15 million is a major goal, since that amount is estimated to yield sufficient interest income to cover the difference between total operating expenses and charges to users of IDLI's services.

Since its founding, IDLI has provided training both in Rome and in the field to more than 4,000 participants from 150 countries. Rome-based courses are typically of two, five and 12 weeks' duration, and include such subjects as Development Law, Enterprise and Investment, and Enterprises in Trouble. Also in Rome, IDLI conducts a number of seminars each year which deal with a variety of topics related to law and development. In the field, IDLI conducts shorter courses, characterized as Training Workshops; in 1994, it conducted more than 26 such courses in Africa, Asia, Central and Eastern Europe and Latin America. Courses are conducted by staff lawyers and visiting instructors. Courses in the field are frequently conducted in association with local counterpart organizations. While Africa was the early focus of the organization, its in-country training is now also given in Asia and Central and Eastern Europe. A significant proportion of course participants are women lawyers from developing countries.

During the past year or two, IDLI has begun to diversify its product mix by providing advice and consultation to kindred institutions, primarily in the area of organization management and financial administration. IDLI hopes to expand this practice area in the future.

IDLI is governed by a Board of Directors which is self-appointing for terms of three years. The Board meets annually and is composed principally of prominent lawyers, jurists and academicians from a number of countries. The GOI is formally represented on the Board, while other Directors serve in their private capacities. An Executive Committee, headed by the Chairman of the Board, considers recommendations from Management and makes recommendations to the full Board. The Director of the Institute serves on the Board ex-officio. Member governments constitute IDLI's Assembly, which meets every three years. The Assembly plays a limited but important role in IDLI's governance; for example, it has the authority to overturn decisions of the Board of Directors if a majority of Assembly members object within 90 days of the Board's action.

In addition to its Board, IDLI has now begun to mobilize its network of supporters. One such network consists of lawyers, former guest lecturers and other allies, who have formed "Friends of IDLI" organizations in the U.S. and in Italy. Another, far less formal, network consists of alumni of IDLI courses in developing nations. IDLI hopes to make substantially more use of groups of this kind in the future.

B. RATIONALE FOR THE STUDY

When IDLI began its operations in 1983, the demand for its services was perceived by many donors as marginal and so was their willingness to pay an institution to provide them. In 1983, a grant from the United States Agency for International Development (USAID) provided the means for IDLI to launch its programs, and helped to establish the organization's credibility so that a successful fund raising campaign among the donor community could begin. Demand for IDLI's niche services has heightened after a decade of successful training and the organization is now nearing full institutionalization. The value of IDLI's programs to economic and human development is readily acknowledged by the donor community and host countries are quick to recognize the need for legal training assistance as they struggle to liberalize their economies and rationalize the shifts in legal, regulatory and judicial paradigms which liberalization requires.

During the 1980s, donor funding was comparatively abundant and "institution-building" was viewed as an integral and necessary component of the development process. Grants to support institutional core expenses were viewed by the donor community as necessary and useful for capacity-building. Funding was provided to maintain direct and indirect expenses and additional grants were provided to cover programmatic costs. IDLI (and numerous other organizations) was the beneficiary of this institutional development mindset. It received significant core (unrestricted) grant funds to support its development as well as program funds to sponsor specific training courses and workshops. While legal, judicial and regulatory reform continues to be regarded by the donor community as a critical component for sustaining economic development, the decade of the 1990s has witnessed increasing reluctance by the donor community to support core institutional expenses. Thus IDLI finds itself at the beginning of a transition from its traditional funding mechanisms to alternative revenue sources.

The end of the cold war has hastened globalization of the economy and increased the recognition of the role of legal, regulatory and judicial systems in transforming developing economies. IDLI is facing increased competition as legal training services are developed by other organizations eager to meet this demand, especially in Eastern Europe and Russia.[1] This increased demand for services, combined with the need for bilateral, multilateral and host county institutions to respond rapidly, is structuring a new paradigm for the delivery of development assistance.

Faced with declining budgets, an increasing demand upon limited resources, and choices among price-competitive service providers, donor funding priorities are shifting away from core investments in institutions to those activities and programs which can readily demonstrate immediate transfer of knowledge, technology and application for results. Unrestricted grants to support core operational expenses are becoming increasingly more difficult for donors to justify and equally difficult for grantees to obtain. Instead, donors are seeking ways to justify contributions by linking their individual contributions to the provision of specific services (i.e., training courses). This donor-directed shift toward targeted program assistance and away from core institutional support is implicit in the funding choices donors are making and responds to the perception of the need to rationalize expenditures in ways which are tangible, easily understood and which provide a rapid and visible return to their assistance investment.

This shift in donors' operational and financing strategy is also altering the nature and scope of the relationship between prospective donors and expectant recipients. One direct consequence for IDLI, for example, is that many of its donors have reduced or are in the process of considering the reduction of grant core funding. While a few donors have provided increased support (i.e., the Japanese) other IDLI supporters (i.e, USAID, Canada, etc.) have eliminated (or are in the process of eliminating or reducing) their unrestricted grant contributions to IDLI's core budget. To make matters worse, government contributions for IDLI's programs have also been affected as overall assistance budgets succumb to increasing stringent parliamentary or congressional austerity measures.

[1] The International Law Institute in Washington D.C. is one among a growing number of IDLI's competitors which offers similar price-competitive courses.

As a direct consequence of these factors, the funding environment surrounding IDLI is changing. Success in acquiring grants from traditional sources for operational support holds less promise than a year ago and the trend is clear: donors are increasingly reluctant to provide institutional support grants in times of fiscal austerity. What is at issue is IDLI's sustainability and its capacity to respond to "a new set of rules".

Against this background, IDLI asked USAID for help in developing a strategy and action plan to facilitate the organization's adjustment to this new paradigm in development assistance and allow it to continue to provide and expand its services.

C. THE METHODOLOGY

Through Coopers and Lybrand L.L.P., prime contractors for the Private Enterprise Development Services (PEDS) project, USAID provided the services of two experienced consultants, William Fisher, an independent consultant, and Kenneth A. Lanza, Deputy Director, Office of Economic and Institutional Reform, with USAID's Global Bureau in Washington, DC. Profiles of the consultants are found in Annex C.

The consultants travelled to Rome for intensive discussions with IDLI senior management, staff and members of the Board of Directors, from May 29 through June 8. On June 19, the consultants interviewed the Chairman of IDLI's Board of Directors, Dr. Ibrahim F.I.Shihata, Senior Vice President and General Counsel of the World Bank, in Washington, DC. These discussions focused on a review of IDLI's mission and programs, and development of objectives, a strategic platform, and a series of implementation actions within the context of an ongoing process of strategic planning for sustainable development. The consultants' provisional findings and recommendations were presented to and discussed with IDLI management and staff at many points during the assignment. A list of the persons interviewed is included in Annex A.

In addition, the consultants audited the first morning of an IDLI Rome-based course, and reviewed extensive documentation relating to IDLI's history and evolution, structure and organization, course materials, fund-raising and development activities, and financial performance. The documents consulted are enumerated in Annex B. The consultants' scope of work is outlined in Annex D.

The consultants' findings and recommendations are presented within a report structure which poses three questions: Where Are We Now?; Where Do We Want to Be?; and How Do We Get There?.

This report is not intended to serve as an end in itself. Rather, its objective is to stimulate an <u>internal</u> and continuously iterative process of strategic planning, implementation of sustainability initiatives, consistent monitoring and measurement of programmatic and financial performance, and individual staff participation and accountability.

D. WHAT IS SUSTAINABLE DEVELOPMENT?

For purposes of this report, sustainable development is defined as an organization's ability to continue to finance and deliver its core services despite shifts and vicissitudes in patterns of donor involvement. Typically, sustainable development is achieved by reducing financial volatility through planned diversification of revenue sources, development of innovative funding mechanisms, creation of market-led programs and services, and rigorous programs of cost containment.

PART II

WHERE ARE WE NOW?

A. IDLI IN TRANSITION

IDLI is not in crisis. It is, however, at the beginning of a transition which, if not addressed, could easily lead to a crisis.

An analysis of IDLI's finances reveals a healthy and dynamic organization (see Annex E). During 1994, the organization exceeded all past records in terms of revenue and number of course participants, both in Rome and abroad. The balance in its Endowment Fund is currently some $3 million.

However, it is clear that for 1995 and beyond IDLI will need to address a shifting paradigm in development assistance. As illustrated in the tables on the following pages, both unrestricted and restricted core funding has already begun to decline, with most major contributors, including Italy and the US, substantially reducing or eliminating their contributions. Funds to finance the costs of course participants from abroad are becoming far more difficult to access. Both multilateral and bilateral development assistance agencies, themselves faced with serious budget reductions, are now more likely to deploy scarce resources in the form of project funding, i.e. contracting for specific services in specific places at specific times.

IDLI's awareness of and response to this new development environment has been exemplary. In a large sense, it has anticipated the problems it is certain to face in the future, and has begun to think of creative approaches to meeting this new challenge constructively. In this respect, IDLI is different from most organizations which seek to develop strategies and action plans for sustainability: typically, organizations delay developing self-sufficiency strategies and programs such that self-sufficiency often becomes virtually impossible. It is precisely because IDLI is a financially sound and obviously well-managed organization that it is in a position to maximize the benefits of a planned approach and deliberate actions designed to secure its financial future. Such an approach is critical to optimizing resources as IDLI positions itself in the market with a new product mix and seeks supplementary additional sources of revenue. As IDLI well appreciates, its capacity to understand and its ability to react quickly to changing circumstances will ultimately determine its success in achieving financial sustainability.

B. IDLI's CURRENT FINANCIAL SITUATION AND FUTURE SCENARIOS

IDLI's financial situation is currently sound but without prudent, remedial action IDLI's sustainability could be jeopardized within 3-5 years. IDLI describes its financial objectives as wanting to achieve a US$15 million endowment within 7 years. It is expected that the revenue generated from the endowment principal will substitute for declining unrestricted grant revenue which can be used to meet core institutional expenses. While the organization has generated a significant and increasing surplus from operations and interest income for each of the past five years, its unrestricted grants are declining. By 1994, grant revenue represented 45% of IDLI's total revenue base; in 1993, it was 49%. Grant revenue during 1994 was down by 7.5% over 1993. Moreover, it is likely that unrestricted grant revenues will continue to decline in outyears as donor funds for core institutional support become increasingly harder to justify. On the other hand, both tuition and workshop revenues have increased during the same period by 16.28% and 21.35%, respectively.

In order to meet its objectives, certain assumptions regarding the decline of grant revenues and increases in operational revenue were considered over a 10-year horizon. A simple model was constructed (in Lotus 123, V.4.0 for Windows) to examine the impacts of changing variables on IDLI's cash flows. The model contains six variables which can be altered as circumstances warrant to help assess various "what-if" scenarios. The variables included in this model are:

- annual percentage increases (decreases) in grant, tuition and workshop revenue,
- percentage earned on endowment balances,
- annual percentage increase (decrease) of expenses, and
- the anticipated discount rate to calculate real adjusted surplus (loss).

The model is conservative but allows for changes to its assumptions as more precise information becomes available. For purposes of illustrating the impact of changing these variables, the team ran the model under two different scenarios. The first scenario makes the following assumptions: grants decline annually by 10%; tuition increases annually by 7%; workshop revenue increases annually by 10%; interest received on the general endowment is 6%; expenses increase by 5% annually; and the discount rate is 3%. Any surplus (loss) is applied to the general endowment fund. Under those reasonably modest assumptions, IDLI's general endowment fund increases from its current level of $2.534 million to $15.826 million by the end of year 2005, generating approximately $842,022 in annual interest income ($464,969 in 1995 terms), or about 40% of the 1994 grant receipts. This scenario is illustrated in the tables and figures that follow this section.

The second scenario, a more conservative one, anticipates grant declines of 10% annually, tuition held constant at 1994 levels (0% increase), workshop revenue increasing by 10% annually, interest at 6%, expenses increasing at 5% annually and a 3% annual discount factor. Under those assumptions, IDLI's operations would have a negative surplus beginning in year 2000 with its general endowment valued at $5.578 by the year 2005 with interest income generating about $352,212 or about 16% of 1994's grant revenue. Scenario 2 is also illustrated in the tables and figures that follow this section.

More precise assessments of revenue and expenses are difficult to develop because of the need for more accurate cost/revenue estimates. Nevertheless, in the aggregate, the model provides some general indication of trends and allows the user to change the basic assumptions to see what impacts can be anticipated as conditions change. The model is also a conservative one which assumes as its beginning premise that IDLI does not receive additional contributions to its endowment fund. It further assumes that increases to the fund are generated from operating surplus and interest earned from the general endowment balances. Obviously, this need not be the case. In fact, IDLI may receive additional unrestricted grant contributions from donors. However, for the purpose of assessing self-sustainability, IDLI should examine the various combinations of "product mix" to determine from which sources of revenue it might maximize its surplus. Once IDLI's cost system has been established, matching direct and indirect costs to revenue sources will provide the information to help identify the appropriate mix of services and the appropriate pricing of those services. The model can then be further refined.

The team also conducted regression analyses using the sum of the least squares methodology in order to examine the trends in (i) workshop revenues and expenses (Insert B), (ii) tuition revenue divided by fellowship and ad-hoc sponsored groups (Insert C) and, (iii) total revenue and expenses based upon the last five years of data (Insert D). In its broadest sense, these simple projections demonstrate that the trend for IDLI's services is significantly positive. However, these statistical calculations do not consider the market's resistance to prices, potential shifts in demand or a multitude of other significant factors which are likely to come into play. It is a simple indication (or perhaps, confirmation) that the trends for IDLI services, as determined over the previous five years, are generally positive. [One note of caution: revenues from IDLI-sponsored participants is increasing at an increasing rate compared to ad-hoc candidates. For example, revenues generated from IDLI-sponsored candidates was 1.57:1 in 1990. At the current rate, it will be 2.64:1 by 2005.][2]

At a minimum, if IDLI expects to meet it financial objectives of generating a $15 million endowment by the year 2005, operating surpluses must increase. Expenses, as best as we can determine, have been held to a reasonable minimum. In lieu of generating additional revenue, or preferably in addition to it, IDLI should actively seek unrestricted contributions from donors to the endowment fund.

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[2] "Revenues from IDLI-sponsored participants" means that IDLI subsidized participants with its restricted funds.

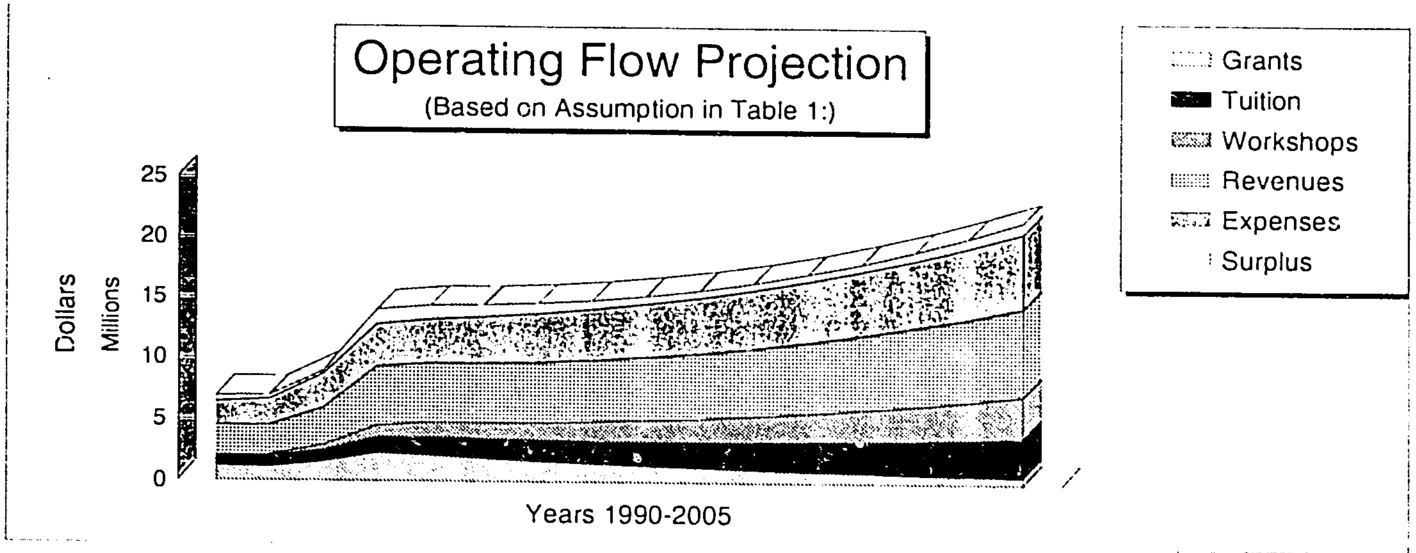
Insert A: Scenario 1

	1990	1991	1992	1993	1994	Over '93 % + (-)
Revenues:						
Grants	$1,222,398	$1,151,069	$1,612,963	$2,323,589	$2,149,383	-7.50%
Tuition	$731,120	$823,900	$840,200	$1,242,000	$1,444,200	16.28%
Workshops	$150,796	$152,250	$472,164	$1,002,247	$1,216,209	21.35%
Donor Endowment	$0	$0	$0	$55,015	($41,941)	-176.24%
General Endowment	$151,575	$227,304	$56,622	$74,253	($37,332)	-150.28%
Other Income	$147,506	$61,789	$49,187	$39,216	$54,508	38.99%
Total Rev:	**$2,403,395**	**$2,416,312**	**$3,031,136**	**$4,736,320**	**$4,785,027**	**1.03%**
Expenses:						
Program Services	$1,809,934	$2,023,311	$2,309,250	$1,204,434	$1,276,028	5.94%
Genl&Fundraising	$0	$0	$0	$1,073,805	$1,171,722	9.12%
Depreciation	$0	$0	$0	$214,076	$218,655	2.14%
Sub Total	**$1,809,934**	**$2,023,311**	**$2,309,250**	**$2,492,315**	**$2,666,405**	**6.99%**
Partic Travel & PD	$0	$0	$0	$353,001	$361,628	2.44%
Workshops	$122,045	$91,664	$271,847	$502,444	$586,603	16.75%
Exchange (loss)	$0	$0	$180,500	$165,612	$29,267	-82.33%
Total Expense:	**$1,931,979**	**$2,114,975**	**$2,761,597**	**$3,513,372**	**$3,643,903**	**3.72%**
Surplus (loss)	$471,416	$301,337	$269,539	$1,222,948	$1,141,124	-6.69%

Assumptions	
Grants	-10.00%
Tuition	7.00%
Workshops	10.00%
Interest	6.00%
Expenses	5.00%
Discount	3.00%

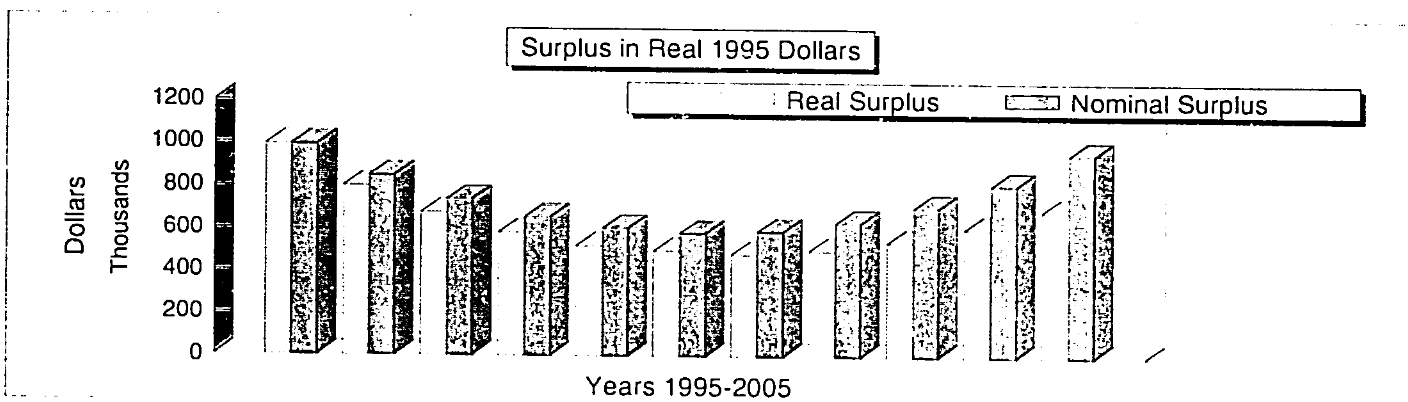
Operational Flc	1990	1991	1992	1993	1994	1995	1996	1997
Grants	$1,222,398	$1,151,069	$1,612,963	$2,323,589	$2,149,383	$1,934,445	$1,741,000	$1,566,900
Tuition	$731,120	$823,900	$840,200	$1,242,000	$1,444,200	$1,545,294	$1,653,465	$1,769,207
Workshops	$150,796	$152,250	$472,164	$1,002,247	$1,216,209	$1,337,830	$1,471,613	$1,618,774
Revenues	$2,403,395	$2,416,312	$3,031,136	$4,736,320	$4,785,027	$4,817,569	$4,866,078	$4,954,881
Expenses	$1,931,979	$2,114,975	$2,761,597	$3,513,372	$3,643,903	$3,826,098	$4,017,403	$4,218,273
Surplus	$471,416	$301,337	$269,539	$1,222,948	$1,141,124	$991,470	$848,675	$736,608
Surplus ('95 $)						$991,470	$799,957	$674,101
General Endownment Fund:								
Beg Yr. Bal					$1,435,941	$2,534,000	$3,676,040	$4,736,602
pGain (loss)/Interest					($41,941)	$152,040	$220,562	$284,196
nsfer In.Op Surplus					$1,141,124	$991,470	$848,675	$736,608
Less:								
Adjust (Operations)					$1,124	$1,470	$8,675	$6,608
Bal: Year End:					**$2,534,000**	**$3,676,040**	**$4,736,602**	**$5,750,799**
Operational Reserve					$200,000	$208,000	$216,320	$224,973
					$2,334,000	$3,468,040	$4,520,282	$5,525,826

Operational Flc	1998	1999	2000	2001	2002	2003	2004	2005
Grants	$1,410,210	$1,269,189	$1,142,270	$1,028,043	$925,239	$832,715	$749,444	$674,499
Tuition	$1,893,052	$2,025,565	$2,167,355	$2,319,070	$2,481,404	$2,655,103	$2,840,960	$3,039,827
Workshops	$1,780,652	$1,958,717	$2,154,588	$2,370,047	$2,607,052	$2,867,757	$3,154,533	$3,469,986
Revenues	$5,083,913	$5,253,471	$5,464,213	$5,717,160	$6,013,695	$6,355,575	$6,744,936	$7,184,313
Expenses	$4,429,187	$4,650,646	$4,883,179	$5,127,337	$5,383,704	$5,652,890	$5,935,534	$6,232,311
Surplus	$654,727	$602,825	$581,035	$589,823	$629,991	$702,685	$809,402	$952,002
Surplus ('95 $)	$581,716	$520,002	$497,321	$479,580	$497,321	$538,550	$602,271	$687,746
General Endownment Fund:								
Beg Yr. Bal	$5,750,799	$6,745,846	$7,750,597	$8,795,633	$9,903,371	$11,117,573	$12,484,628	$14,033,705
pGain (loss)/Interest	$345,048	$404,751	$465,036	$527,738	$594,202	$667,054	$749,078	$842,022
nsfer In.Op Surplus	$654,727	$602,825	$581,035	$589,823	$629,991	$702,685	$809,402	$952,002
Less:								
Adjust (Operations)	$4,727	$2,825	$1,035	$9,823	$9,991	$2,685	$9,402	$2,002
Bal: Year End:	**$6,745,846**	**$7,750,597**	**$8,795,633**	**$9,903,371**	**$11,117,573**	**$12,484,628**	**$14,033,705**	**$15,825,728**
Operational Reserve	$233,972	$243,331	$253,064	$263,186	$273,714	$284,662	$296,049	$307,891
	$6,511,875	$7,507,267	$8,542,569	$9,640,185	$10,843,860	$12,199,965	$13,737,657	$15,517,837



Scenario 1

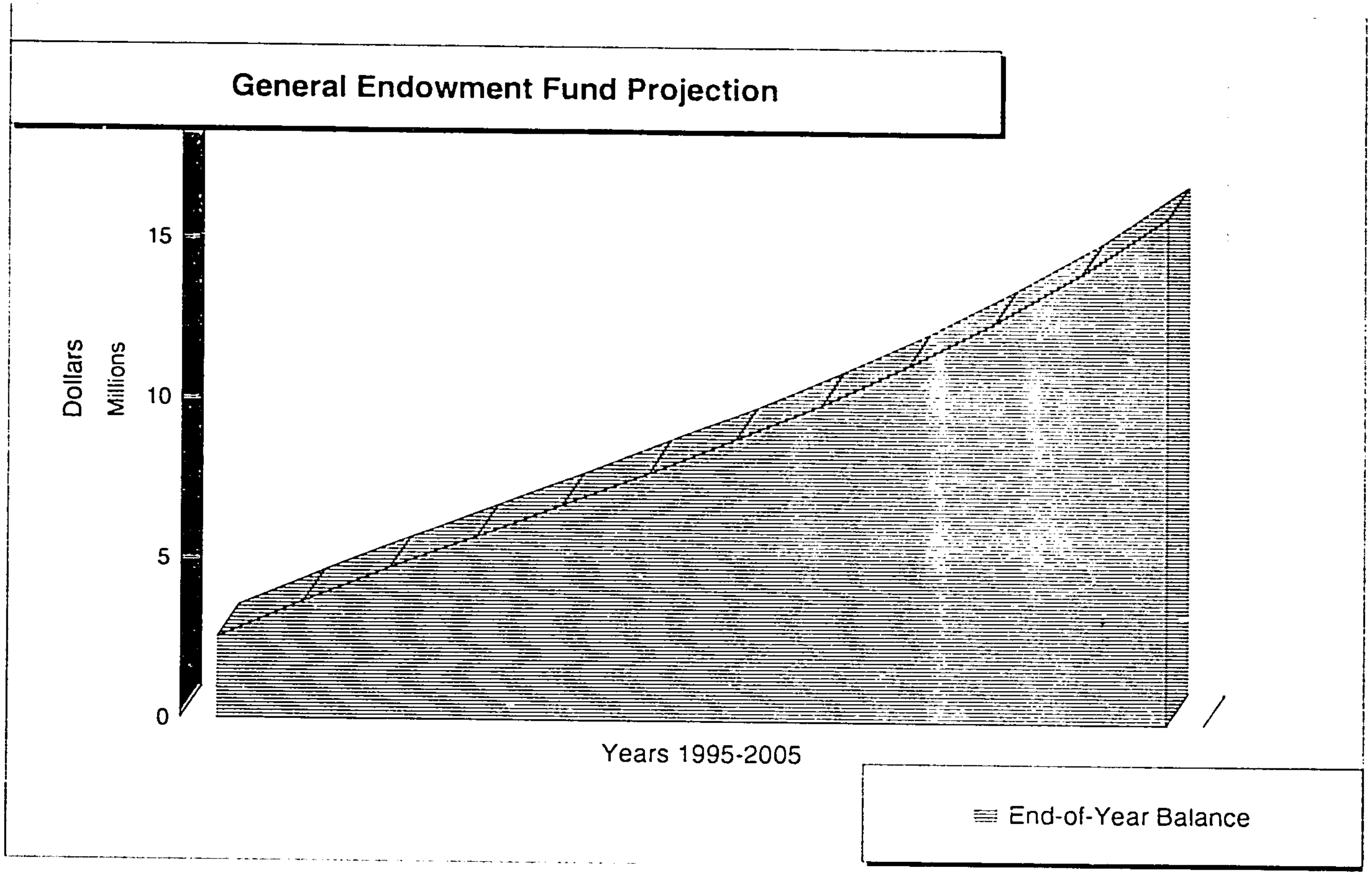
Assumptions:	**Grants**	**-10.00%**
	Tuition	**7.00%**
	Workshops	**10.00%**
	Interest:	**6.00%**
	Expenses:	**5.00%**
	Discount	**3.00%**



Surplus (Deficit)

Cum1995- 2005:

1995 $:	**$6,870,036**
Current $:	**$8,099,243**



Scenario 1

Fund Balance 2005: **$15,517,837**

Annual Return: **6.00%**

Insert A: Scenario 2

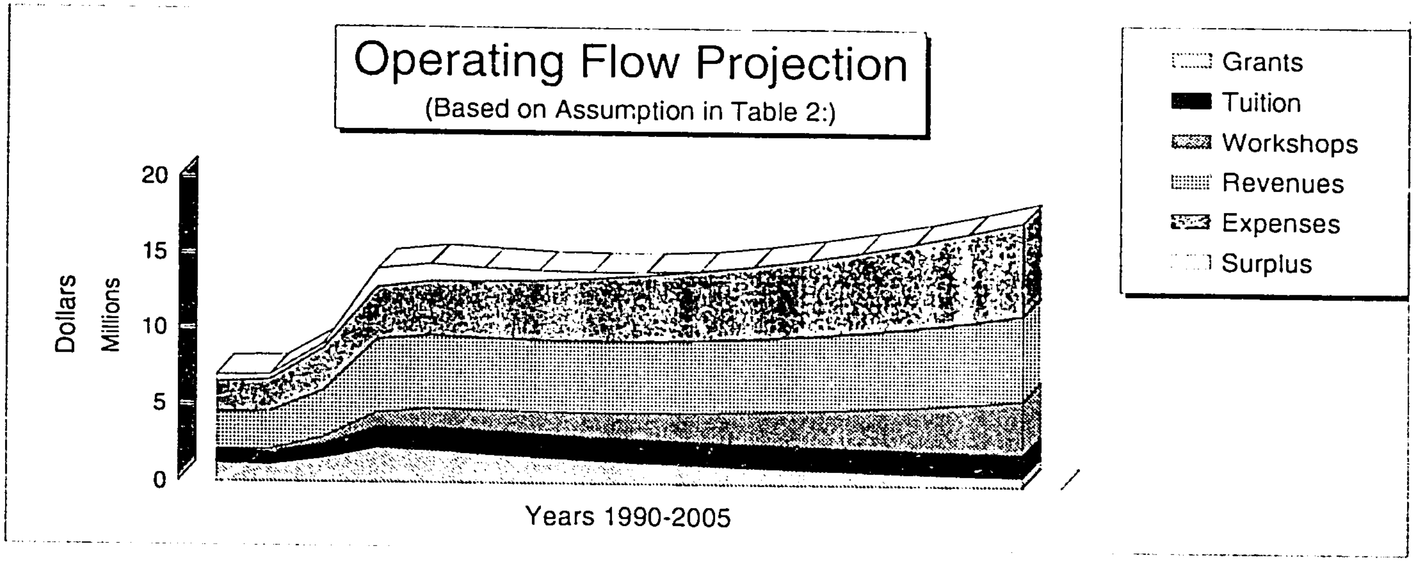
Assumptions	
Grants	-10.00%
Tuition	0.00%
Workshops	10.00%
Interest	6.00%
Expenses	5.00%
Discount	3.00%

	1990	1991	1992	1993	1994	Over '93 % + (-)
Revenues:						
Grants	$1 222,398	$1,151,069	$1 612,963	$2,323,589	$2,149,383	-7 50%
Tuition	$731,120	$823 900	$840,200	$1 242,000	$1,444,200	16 28%
Workshops	$150,796	$152 250	`172,164	$1 002 247	$1,216,209	21 35%
Donor Endowment	$0	$0	$0	$55,015	($41,941)	-176 24%
General Endowment	$151,575	$227,304	$56,622	$74,253	($37,332)	-150 28%
Other Income	$147,506	$61,789	$49,187	$39 216	$54 508	38 99%
Total Rev:	**$2,403,395**	**$2,416,312**	**$3,031,136**	**$4,736,320**	**$4,785,027**	**1.03%**
Expenses:						
Program Services	$1,809,934	$2,023,311	$2,309,250	$1 204,434	$1,276,028	5 94%
Genl&Fundraising	$0	$0	$0	$1,073,805	$1,171,722	9 12%
Depreciation	$0	$0	$0	$214,076	$218,655	2 14%
Sub Total	**$1,809,934**	**$2,023,311**	**$2,309,250**	**$2,492,315**	**$2,666,405**	**6.99%**
Partic: Travel & PD	$0	$0	$0	$353,001	$361,628	2 44%
Workshops	$122,045	$91,664	$271,847	$502,444	$586,603	16 75%
Exchange (loss)	$0	$0	$180,500	$165,612	$29,267	-82 33%
Total Expense:	**$1,931,979**	**$2,114,975**	**$2,761,597**	**$3,513,372**	**$3,643,903**	**3.72%**
Surplus (loss)	$471,416	$301,337	$269,539	$1,222,948	$1,141,124	-6 69%

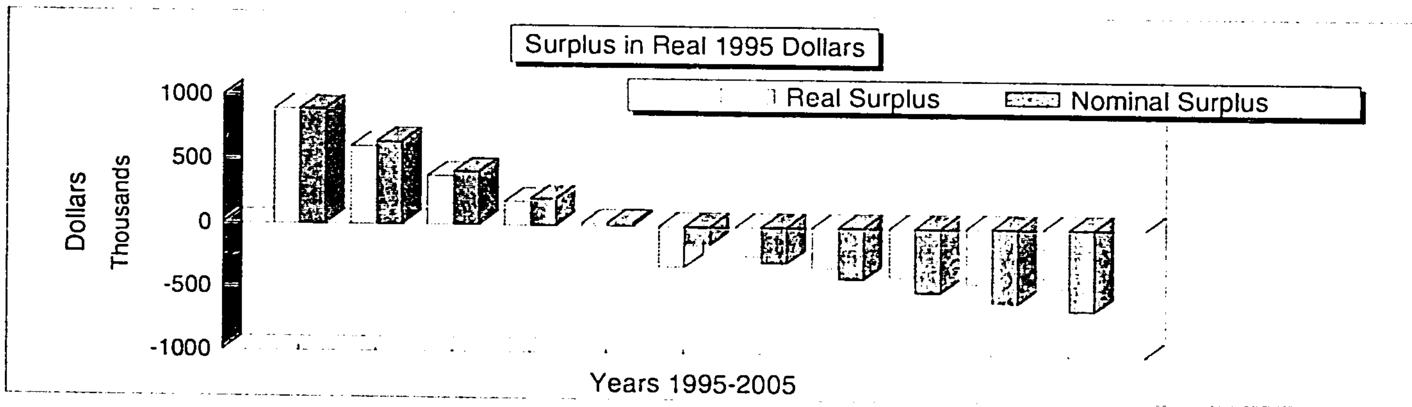
Operational Flow	1990	1991	1992	1993	1994	1995	1996	1997
Grants	$1,222,398	$1,151,069	$1,612,963	$2,323,589	$2,149,383	$1,934,445	$1,741,000	$1,566,900
Tuition	$731,120	$823,900	$840,200	$1,242,000	$1,444,200	$1,444,200	$1,444,200	$1,444,200
Workshops	$150,796	$152,250	$472,164	$1,002,247	$1,216,209	$1,337,830	$1,471,613	$1 618,774
Revenues	$2,403,395	$2,416,312	$3,031,136	$4,736,320	$4,785,027	$4,716,475	$4,656,813	$4,629,874
Expenses	$1,931,979	$2,114,975	$2,761,597	$3,513,372	$3,643,903	$3,826,098	$4,017,403	$4,218,273
Surplus	$471,416	$301,337	$269,539	$1,222,948	$1,141,124	$890,376	$639,410	$411,601
Surplus ('95 $)						$890,376	$602,705	$376,673
General Endowment Fund:								
Beg Yr. Bal					$1,435,941	$2,534,000	$3,576,040	$4,420,602
CapGain (loss)/Interest					($41,941)	$152,040	$214,562	$265,236
Transfer In Op Surplus					$1,141,124	$890,376	$639,410	$411,601
Less:								
Adjust (Operations)					$1,124	$376	$9,410	$1,601
Bal: Year End:					**$2,534,000**	**$3,576,040**	**$4,420,602**	**$5,095,839**
Operational Reserve					$200,000	$208,000	$216,320	$224,973
					$2,334,000	$3,368,040	$4,204,282	$4,870,866

Operational Flow	1998	1999	2000	2001	2002	2003	2004	2005
Grants	$1,410,210	$1,269,189	$1,142,270	$1,028,043	$925,239	$832,715	$749,444	$674,499
Tuition	$1,444,200	$1,444,200	$1,444,200	$1,444,200	$1,444,200	$1,444,200	$1,444,200	$1,444,200
Workshops	$1,780,652	$1 958,717	$2,154,588	$2,370,047	$2,607,052	$2,867,757	$3,154,533	$3,469,986
Revenues	$4,635,062	$4,672,106	$4,741,059	$4,842,291	$4,976,491	$5,144,672	$5,348,176	$5,588,685
Expenses	$4,429,187	$4,650,646	$4,883,179	$5,127,337	$5,383,704	$5,652,890	$5,935,534	$6,232 311
Surplus	$205,875	$21,460	($142,120)	($285,047)	($407,213)	($508,217)	($587,358)	($643,625)
Surplus ('95 $)	$182,917	$18,511	($321,458)	($231,769)	($321,458)	($389,506)	($437,049)	($464,969)
General Endowment Fund:								
Beg Yr. Bal	$5,095,839	$5,601,589	$5,957,684	$6,173,025	$6,258,360	$6,226,648	$6,092,030	$5,870,194
CapGain (loss)/Interest	$305,750	$336,095	$357,461	$370,382	$375,502	$373,599	$365,522	$352,212
Transfer In Op Surplus	$205 975	$21,460	($142,120)	($295,047)	($407,213)	($508,217)	($587,358)	($643,625)
Less:								
Adjust (Operations)	$5,875	$1,460	$0	$0	$0	$0	$0	$0
Bal: Year End:	**$5,601,589**	**$5,957,684**	**$6,173,025**	**$6,258,360**	**$6,226,648**	**$6,092,030**	**$5,870,194**	**$5,578,780**
Operational Reserve	$233,972	$243,331	$253,064	$263,186	$273,714	$284,662	$296,049	$307,891
	$5,367,617	$5,714,354	$5,919,962	$5,995,174	$5,952,934	$5,807,367	$5,574,145	$5,270,889

Scenario 2

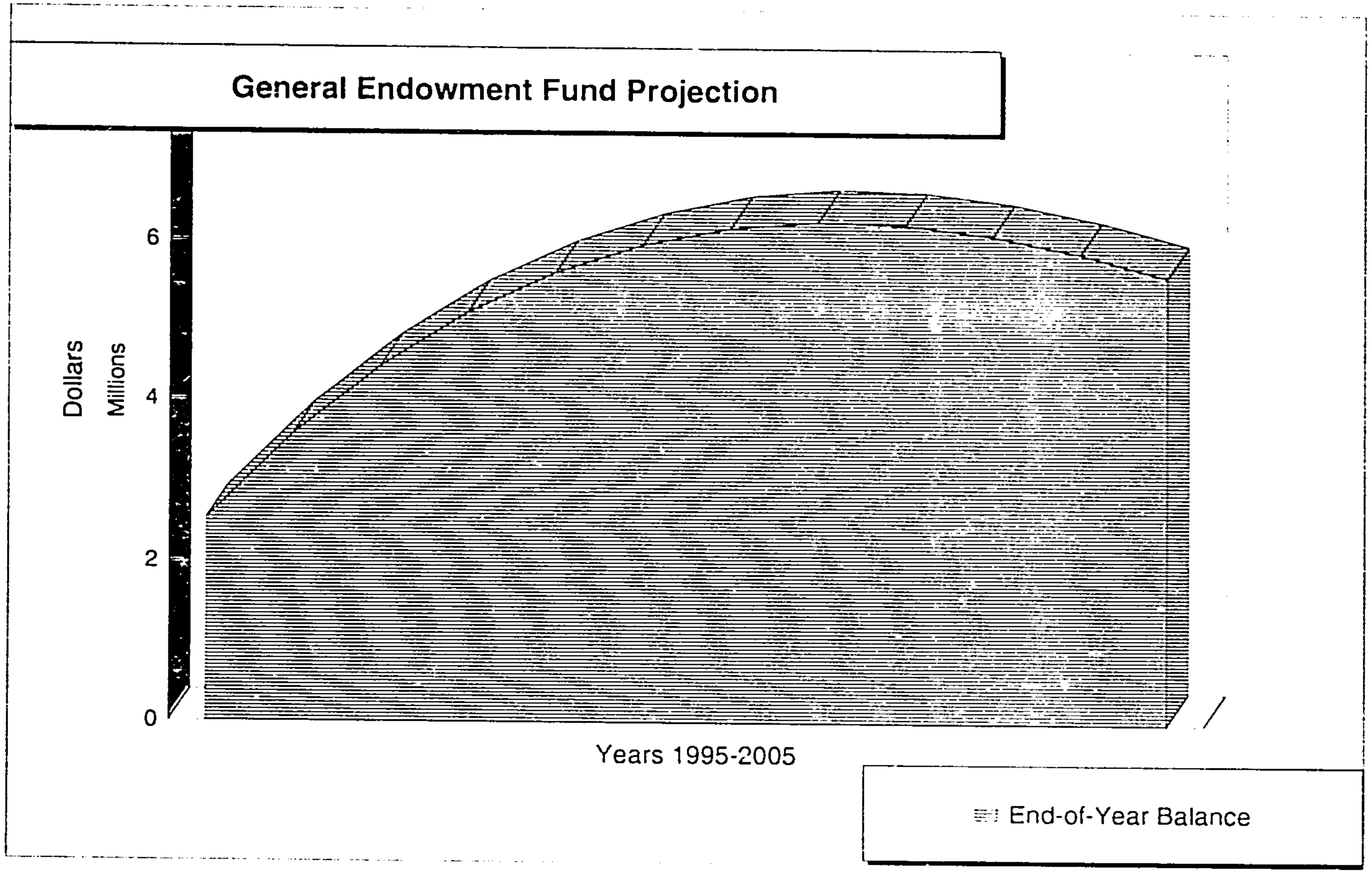


Assumptions:	**Grants**	**-10.00%**
	Tuition	**0.00%**
	Workshops	**10.00%**
	Interest:	**6.00%**
	Expenses:	**5.00%**
	Discount	**3.00%**



Surplus (Deficit)	
Cum1995- 2005:	
1995 $:	**($95,026)**
Current $:	**($404,858)**

Scenario 2



Fund Balance 2005: **$5,270,889**

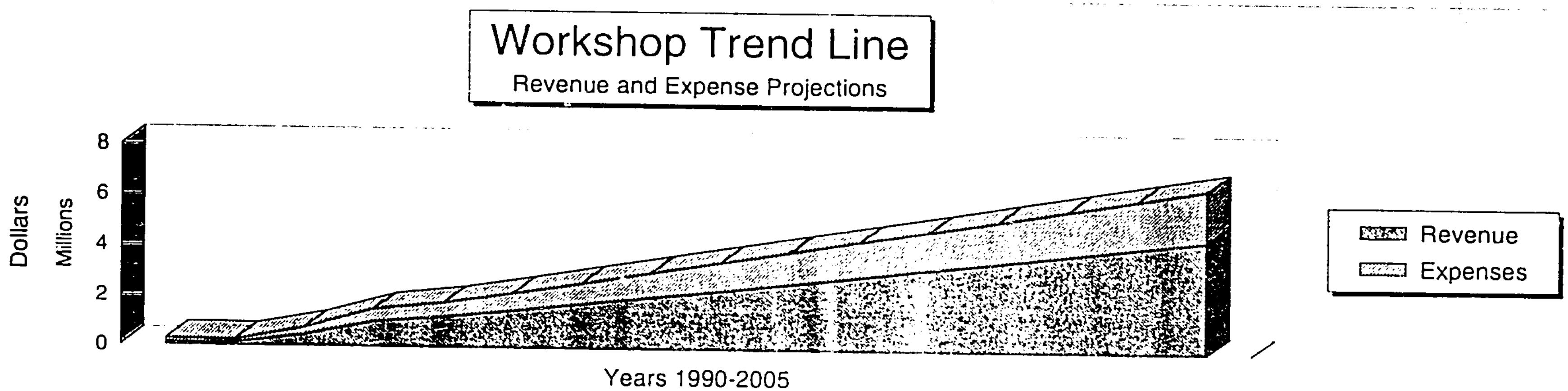
Annual Return: **6.00%**

Workshop Trends

(based upon best available information)

insert B

	Workshops	Workshops Expenses:*	Workshop Rev Regression Output:	
1990	$150,796	$122,045	Constant	-593181208.4
1991	$152,250	$91,664	Std Err of Y Est	154471.05452
1992	$472,164	$271,847	R Squared	0.9254423088
1993	$1,002,247	$502,444	No. of Observations	5
1994	$1,216,209	$586,603	Degrees of Freedom	3
1995	$1,492,980	$716,889		
1996	$1,791,062	$850,879	X Coefficient(s)	298082.3
1997	$2,089,145	$984,869	Std Err of Coef.	48848.036487
1998	$2,387,227	$1,118,858	Regression Output:	Wkshop Expenses
1999	$2,685,309	$1,252,848	Constant	-266592362.6
2000	$2,983,392	$1,386,837	Std Err of Y Est	78196.471514
2001	$3,281,474	$1,520,827	R Squared	0.9072952428
2002	$3,579,556	$1,654,817	No. of Observations	5
2003	$3,877,639	$1,788,806	Degrees of Freedom	3
2004	$4,175,721	$1,922,796		
2005	$4,473,803	$2,056,785	X Coefficient(s)	133989.6



Based upon Least Squares Regression
Expenses may be significantly undervalued since allocation of indirect expenses have not been established.

Tuition Revenue: Rome-based Training

Insert C

	#of Participants*		IDLI-Sponsored	Ad-Hocs
	Franco	Anglo	US$	US$
1990	76	80	$599,951	$380,750
1991	76	82	$736,043	$372,600
1992	76	90	$818,375	$359,900
1993	89	103	$1,166,801	$428,200
1994	121	111	$1,272,728	$533,100
1995	128	102	$1,384,176	$670,400
1996	135	116	$1,584,306	$657,297
1997	147	122	$1,752,295	$714,384
1998	158	128	$1,920,284	$771,471
1999	170	134	$2,088,272	$828,558
2000	182	140	$2,256,261	$885,645
2001	193	146	$2,424,250	$942,732
2002	205	152	$2,592,239	$999,820
2003	217	158	$2,760,227	$1,056,907
2004	228	164	$2,928,216	$1,113,994
2005	240	170	$3,096,205	$1,171,081

*Assumes that participants attending will remain constant (at current capacity) after 1995.

IDLI-sponsored Regression Output:

Constant	-333721224.5
Std Err of Y Est	68118.536952
R Squared	0.9637782582
No. of Observations	6
Degrees of Freedom	4
X Coefficient(s)	167988.74286
Std Err of Coef.	16283.444838

Ad-Hoc Regression Output:

Constant	-113288640.5
Std Err of Y Est	66130.759088
R Squared	0.7652706482
No. of Observations	6
Degrees of Freedom	4
Degrees of Freedom	4
X Coefficient(s)	57087.142857
Std Err of Coef.	15808.275044

Regression Output: Francophone Students

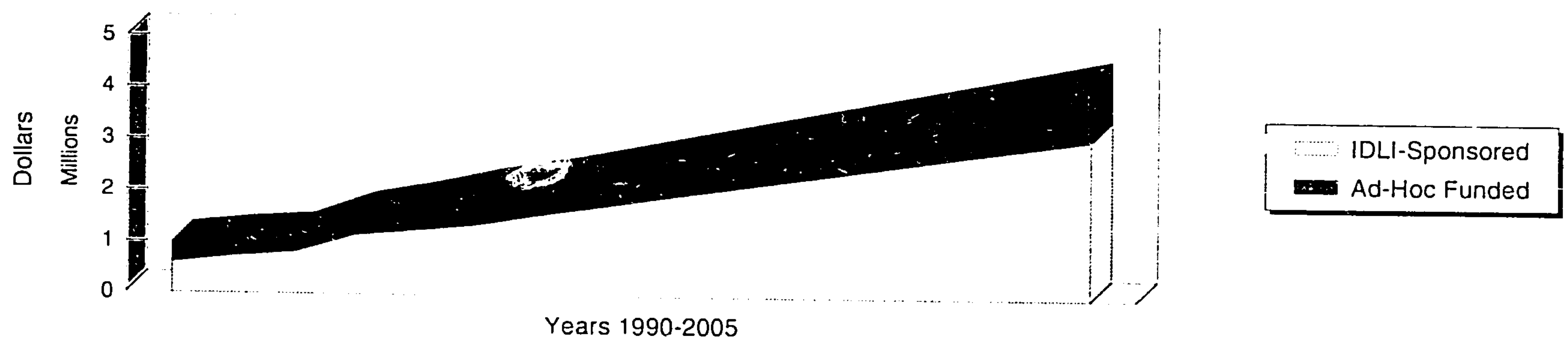
Constant	-23132.52380952382
Std Err of Y Est	11.216909004670031
R Squared	0.8253321874793416
No. of Observations	6
Degrees of Freedom	4
X Coefficient(s)	11.657142857142858
Std Err of Coef.	2.6813541101364399

Regression Output: Anglophone Students

Constant	-11860.33333333334
Std Err of Y Est	6.2716292407422597
R Squared	0.8001693480101609
No. of Observations	6
Degrees of Freedom	4
X Coefficient(s)	6
Std Err of Coef.	1.4992061391346582

Tuition Revenue Trend

IDLI-Sponsored Vrs. Ad-Hoc



Year 1995 figures were extrapolated from 6-month data.

Revenue and Expenses: Regressed Trend Lines

Insert D

Rev & Expenses:

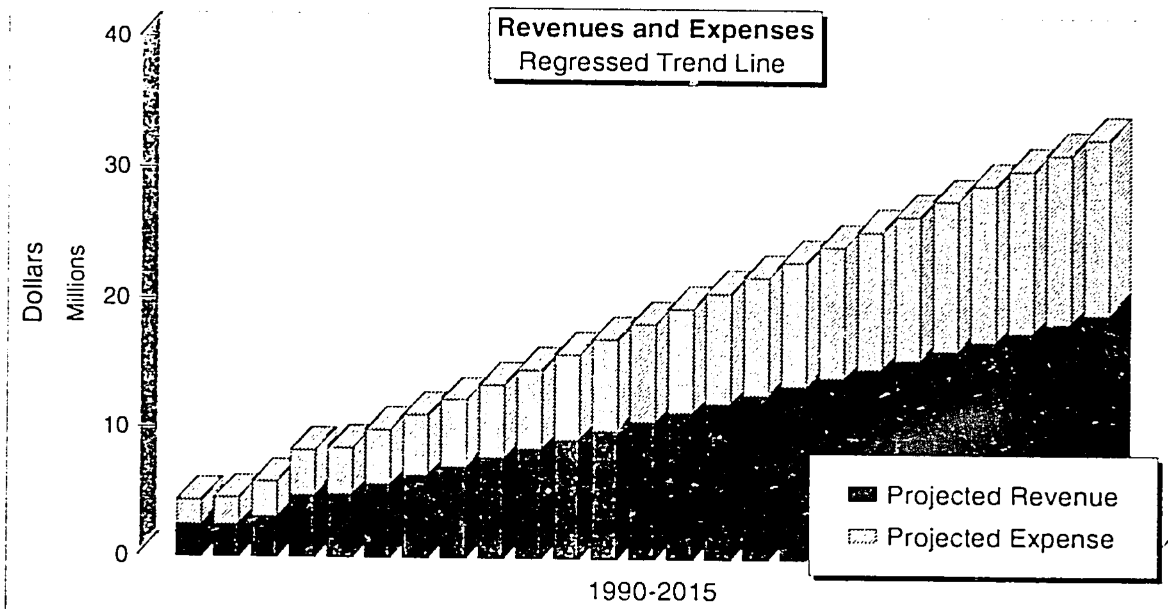
x	Total Rev:	Total Expense:
1990	$2,403,395	$1,931,979
1991	$2,416,312	$2,114,975
1992	$3,031,136	$2,761,597
1993	$4,736,320	$3,513,372
1994	$4,785,027	$3,643,903
1995	$5,599,420	$4,239,839
1996	$6,307,747	$4,722,063
1997	$7,016,074	$5,204,288
1998	$7,724,401	$5,686,512
1999	$8,432,728	$6,168,737
2000	$9,1[illegible]	$6,650,961
2001	$9,849,383	$7,133,186
2002	$10,557,710	$7,615,410
2003	$11,266,037	$8,097,635
2004	$11,974,364	$8,579,859
2005	$12,682,692	$9,062,084
2006	$13,391,019	$9,544,308
2007	$14,099,346	$10,026,533
2008	$14,807,673	$10,508,757
2009	$15,516,000	$10,990,982
2010	$16,224,328	$11,473,206
2011	$16,932,655	$11,955,431
2012	$17,640,982	$12,437,655
2013	$18,349,309	$12,919,880
2014	$19,057,636	$13,402,104

Regression Output:

Constant		-1407513344
Std Err of Y Est		501994.65109
R Squared		0.8690523959
No. of Observations		5
Degrees of Freedom		3
X Coefficient(s)	708327.2	
Std Err of Coef.	158744.64707	

Regression Output:

Constant		-957798038.8
Std Err of Y Est		199689.86355
R Squared		0.9510729981
No. of Observations		5
Degrees of Freedom		3
X Coefficient(s)		482224.5
Std Err of Coef.		63147.479446



PART III

WHERE DO WE WANT TO BE?

A. IDLI's MISSION

As IDLI faces the new paradigm for development assistance, its strategies, activities and mind-set will need to flow from its vision for the future, a vision which should be captured in the organization's Mission Statement. Following is the Mission Statement currently used by IDLI:

> ***To provide the highest quality of legal training related to economic development in developing countries and countries with emerging market economies, and to gain increased recognition for excellence in this field.***

While this statement provides a reasonable description of IDLI's method of implementing service delivery, i.e. training, it does not adequately address the objectives of such training, nor does it cover the full range of existing and potential services the organization now provides or wishes to provide in the future.

The consultants therefore suggest that IDLI consider the following revision of its Mission Statement:

> ***To provide the highest quality training, advisory and information services to assist lawyers, and those who work with lawyers, in developing countries and emerging economies to contribute to democratization, legal reform and the rule of law.***

B. OBJECTIVES OF SUSTAINABLE DEVELOPMENT

The following objectives flow from the above mission statement as it relates to the task of achieving sustainability over the next five years:

- ***To provide an increasing range of legal training and advisory and information services to participants from developing countries and emerging economies.***
- ***To provide these services on a more global basis.***
- ***To reduce financial risk by minimizing volatility through diversification of revenue sources.***

- *To generate revenue sufficient to increase IDLI's endowment fund to $15 million in order to reduce dependence on any single donor or class of donors and be able to cover operating expenses from endowment interest income.*

- *To adopt and monitor rational cost containment measures to limit the growth of expense while continuing to invest prudently in its future.*

C. STRATEGIC PLATFORMS FOR SUSTAINABLE DEVELOPMENT

To achieve these objectives, IDLI should consider a more strategic and less ad hoc approach to its future development. The following are suggested as the principal strategic planks of IDLI's sustainability platform. Strategically, IDLI must begin now to position itself to:

- *Proactively seek support from new sources of revenue, particularly corporations, foundations and consulting firms, in addition to continuing to pursue support from conventional donors.*

- *Modify existing products and/or create new products to meet the demands of particular geographic areas or satisfy the interests of new and conventional groups of supporters.*

- *Increase credibility in and access to new geographic markets by establishing or expanding working relationships with like-minded and respected indigenous organizations.*

- *Increase access to new funding sources by building on and institutionalizing the "Friends of IDLI" concept, creating and/or expanding sub-contracting relationships with major consulting firms, and re-examining the role of the Board of Directors in the fund-raising area.*

- *Explore creative fund-raising mechanisms for facilitating revenue generation from developing countries.*

D. ENDOWMENT FUNDS: RATIONALE AND APPROACH FOR FINANCIAL SUSTAINABILITY

1. Understanding the Environment

IDLI's legal training and assistance services to the developing world are unique. Donor programs recognize IDLI's services as instrumental to successfully implement development objectives. The role of legal counsel in effectively negotiating international agreements, understanding the consequences of bilateral and multilateral contracts and the nuances of complicated procurement policies can contribute or detract from the progress of developing countries toward achievement of their goals. Uninformed or untrained developing country counsel directly and negatively impact rapid progress.

The economic externalities generated by such training while not easily captured by the private sector can and should be easily understood by public sectors, especially by donor governments. The influence of IDLI-trained development lawyers on others in their countries has an immediate and important multiplier effect.

While donor governments are quick to recognize the externalities generated by supporting programs such as IDLI, new funding realities are permeating the equation of priorities. Official donor institutions are seeking ways to justify their expenditures in terms that are easily explainable, transparent and in which impacts are immediately visible. While the need for IDLI's legal training is increasingly in demand as donors emphasize legal and judicial reforms as cornerstones to sustainable development, the pressures to resist "core" operational support to institutions is also increasing. This "disconnect" places a tremendous challenge on IDLI and other organizations which rely on donor support to fund "core" expenses. The once-favorable funding environment is shifting as development paradigms change and donor funding resources are reexamined by governments and their constituents.

2. Why An Endowment?

The purpose of an endowment is to help IDLI complete its institutionalization process to assure that the services it provides continue despite the mercurial nature of development funding sources. The objective of an endowment would be to provide sufficient income from its capital to assure that IDLI's core operating funding needs are met. A sufficiently-endowed IDLI would be able to withstand the transition in the donor funding environment. Once the level of endowment were achieved, donor funds would only be required to support specific programs and projects.

An endowment provides the means necessary for IDLI to remain flexible for meeting donor and development priorities for legal, judicial and regulatory reform; essential components for both economic and democratic development. Lack of a sufficiently-funded endowment creates uncertainty, increases organizational risks, and can inadvertently provoke a de-institutionalization of IDLI, meaning that the organization's ability to keep good people, maintain its facilities and provide its unique body of knowledge becomes subject to the unpredictable ebb and flow of bilateral funding. In effect, the lack of an assured source of core funding means that when donors require IDLI's services, the Institute may not be there to provide them.

Allowing IDLI's de-institutionalization would be extremely costly for donors in the long-run. It would mean that the Institute's capacity-building and specialized training knowledge would have to be reconstituted each time the donor community shifted its development priorities. The cost of a modest endowment, however, well outweighs the high costs of reconstituting IDLI's services, locating and retraining new staff and reestablishing programs. Preservation of IDLI assures that legal training and related services continue to be available and responsive to donor priorities, that they are flexible and that key staff and the body of specialized knowledge which has taken twelve years (and significant donor investment) to accumulate are not lost.

Additionally, an endowment would prevent the organization from incurring significant costs in the constant search for core funds. Once the endowment goal is achieved, staff time could be more productively focused on developing, designing and implementing programs and the considerable expense of fund-raising for core support would be reduced. [3]

An endowment will allow IDLI to survive the emerging transitions in development paradigms. The Institute's capacity would be preserved, allowing it to available and responsive to new development opportunities and markets.

In sum, a sufficiently-funded endowment would complete IDLI's institutionalization process. It would provide core sustainability, assuring that the specialized knowledge and services it provides will continue to be available when donor and host governments demand them despite the shift in development funding trends. An endowment allows core staff and facilities to be maintained, avoiding the time and expense of reconstituting these services later on if IDLI were allowed to disappear. It is recommended, therefore, that the Institute's leadership attempt to increase IDLI's endowment to $15 million by the year 2005. Failure to achieve such a level will inevitability impact in a negative way the Institute's capacity to provide the services upon which donors and host governments have come to rely and which will continue to be necessary for achieving development goals.

[3] Clearly, proposals for *program funds* would still need to be developed and marketed, but the core services of the organization could continue despite a shortfall of donor funding in any given year--thereby assuring the provision of services which are increasingly in demand by donors and host governments alike.

PART IV

HOW DO WE GET THERE?

A. IMPLEMENTING THE STRATEGY

1. STRATEGIC PLANNING

Recommendation:

- ***IDLI should develop a Strategy and a 5-year Action Plan for Sustainability.***

Strategic planning is not an event or an isolated activity. It is a process. It utilizes documentation which includes a strategy statement, specific, timed goals and objectives, program activities, responsibilities, benchmarks for evaluation, quarterly roll-overs of costs and revenues, comparison of projections with actuals, etc. Strategic planning is on-going, dynamic, continuously iterative, and involves many members of professional and support staff. As a result of the strategic planning process, IDLI should be in a position to measure the relative risk and reward of each activity or project, assign priorities over time, and monitor actual performance against plan. It will also enable IDLI to reduce or eliminate the ad hoc nature apparent in some of the organization's decisions and initiatives in favor of a more orderly and phased approach. Task Forces may be organized to examine particular proposed initiatives and make recommendations to a Strategic Planning Group (see below). The information generated by the process should enable IDLI to make more informed judgments and to adjust strategies and implementation plans based on performance. Two tools to assist in the Strategic Planning process are included in this report. A format for Strategic Planning Project/Activity Evaluation will be found in Annex G. Annex E contains a table designed to help management and staff to estimate the relative risks and rewards of each activity.

Recommendation:

- ***IDLI should organize a Strategic Planning Group and designate a PLC to manage and monitor the strategic planning process.***

We suggest that the Policy Management Group form the core of a Strategic Planning Group (SPG). The SPG should meet monthly, first to refine the strategic platforms and objectives listed in the previous section of this report, thereafter to assess relative costs and benefits of specific implementation actions, to monitor performance and to make adjustments where appropriate. Moreover, while strategic planning is very much a group effort, it is generally useful for a single person to be designated to manage the process. We suggest that this task be assigned to a Program Legal Counsel (PLC). Responsibilities should include oversight of preparation of materials for monthly meetings, liaison with task forces, minutes of meetings of the SPG, observance of deadlines, etc.

Recommendation:

- ***IDLI should reinforce its efforts to obtain endowment contributions for unrestricted core expenses and for program expenses from multilateral donors, bilateral donors and host country governments.***

The Institute has been successful thus far in raising sufficient contributions for core expenditures and to support particular programs. However, while it must begin to expand and diversify its "product mix" to increase revenue (as discussed in the next section) the most critical source of its revenues will be from governments. **In order to meet its sustainability objectives, IDLI will continue to require government contribution to its programs and for its core (unrestricted) funds.**

Despite the difficult funding environment or perhaps, because of it, **IDLI should redouble its efforts** to demonstrate to governments that the services it provides are a necessary and fundamental component to successful, sustainable development. In its proposals to donors *for program funds*, IDLI should 1) *emphasize* the uniqueness of its legal training programs, 2) *identify, attribute and relate the successes* of its graduates in evoking development changes to the legal training they received at IDLI in very specific examples and, 3) *justify* the comparatively high costs of IDLI's training (relative to other types of legal training) to the unique methodology, nature and type of training IDLI students receive and to the very high positive returns which IDLI graduates have generated by contributing to their countries developments.

IDLI should simultaneously make an appeal to governments for funds to support its core expenses by requesting contributions to its general endowment fund. The arguments which should be used to support the request for contributions to the endowment are 1) the need to *mitigate risks* of sporadic and undependable donor funding, 2) the *positive externalities* generated by the very specialized training provided to IDLI participants and 3) the *high costs* to the donor community (and to meeting development objectives) if **de-institutionalization** of IDLI occurs.

IDLI should be particularly aggressive about seeking *contributions from its member states*. If the arguments above are insufficient to convince donors of the appropriateness of contributing to IDLI's endowment, then appealing to their sense of *moral obligation* as voluntary members of an international organization may help to persuade their financial participation. Additionally, IDLI should specifically target the newly industrializing nations of East Asia, i.e., South Korea, Taiwan, Thailand, etc., and inviting them to join as member nations and to financially participate in assuring IDLI future.

Multilateral organizations will continue to be an important source of funding. IDLI's fund-raising efforts should continue to concentrate on regional development banks, the IBRD and bilateral donors agencies, especially for seeking endowment funds. The rationale for endowment financing are well understood by many development agencies and most have specific policies regarding the terms for their participation. (USAID's policy is Annexed to this report.)

Finally, IDLI should develop a specific plan of action for approaching governments of the developing countries which are the ultimate beneficiaries of IDLI's training. Host governments often have resources or access to resources which IDLI has not tapped. Efforts to approach host government for both program funds and endowment funds should be make. (a more specific recommendation regarding creative financing mechanisms is discussed under Part IV. A., 2. Business Development).

2. BUSINESS DEVELOPMENT

Recommendation:

- *Further development of "Friends of IDLI" should be given high priority.*

"Friends of IDLI" groups represent a largely untapped potential, particularly in the fund-raising arena. Friends groups have already been constituted in the US and Italy; hence the requirement is to build on these beginnings. Elsewhere, IDLI alumni represent a promising core for organization of additional Friends groups. These activities need to be pursued with vigor, and with some sense of urgency. The Director, a Deputy Director or a senior PLC should be designated to liaise with and advise each of these groups. Each "friends" group should be encouraged and helped to develop its own work plan, time-table and priorities. Where appropriate, each group should have a Board of Directors or Advisory Board, and budget for expenses. However, in working to strengthen the Friends organizations, IDLI must be mindful that members are volunteers with limited time. IDLI staff should provide support to the greatest extent possible.

While it is altogether possible that Friends groups in the US and Italy will have useful contributions to make to programmatic ideas, their major thrust should be fund-raising. In Italy, the Friends group should devote considerable attention to identifying and helping to recruit one or two prominent business persons for consideration for main Board membership. The Italian group can also provide useful liaison with GOI donors. In the US, key members of the embryonic Friends group should be encouraged to join the Board of IDLI's US 501-C-3 corporation (see below). In developing countries and countries with emerging market economies, IDLI alumni should be considered part of the Friends apparatus; these groups can be particularly helpful in securing funding for participants in Rome-based courses, and in approaching local governments and/or counterpart groups to arrange IDLI in-country programs.

Recommendation:

- ***IDLI should consider appointing regional or country representatives to maintain in-region and in-country contacts and keep it up to date on new business development opportunities.***

Regional or Country Representatives could be drawn from "friends" groups and/or other interested and knowledgeable parties. They should eventually evolve into full-time personnel paid by IDLI. Their responsibilities will include identifying and informing IDLI of in-region or in-country program and funding opportunities, and serving as liaison between IDLI and local governments and counterpart organizations, and between IDLI and USAID, World Bank and UN agency missions. The latter activity could be particularly important vis-a-vis USAID, where increasingly funding will be available at the Mission level rather than from Washington.

Recommendation:

- ***IDLI should consider constituting a separate Board of Directors for its US 501-C-3 corporation.***

The United States represents a particularly promising area for potential IDLI financial support. The US has a tradition of voluntary giving and a correspondingly encouraging tax framework. Most of the world's private and corporate foundations, as well as larger law and economic development consulting firms, are located there. From the US, IDLI can also access various agencies of the US Government, and a wide range of multilateral donor institutions, including the World Bank, the IFC, the InterAmerican Development Bank, and so forth. For these reasons, IDLI should begin the process of organizing its US resources around the not-for-profit corporation it has already established there. For example, selected members of the US "Friends" group could be considered for membership on a US Board. The US "Friends" group might be member-based, provide services to members, and charge annual dues and/or fees for services. But the principal mission of the US "Friends" should be to (a) help IDLI to identify and approach corporations, large law firms, corporate and private foundations, and prospective individual donors, and (b) identify suitable candidates for membership on the IDLI main Board. This will be a slow and difficult process, to which IDLI/Rome will need to devote considerable resources. While the activities of the US "Friends" must be member-driven, IDLI/Rome will be called upon to provide substantial support and guidance. As this group begins to take shape and mature, IDLI should consider recruiting or transferring permanent human and financial resources to the US.

Recommendation:

- ***IDLI should keep itself informed of upcoming bids for public sector contracts in order to bid either as a prime contractor or as a sub-contractor to another firm on appropriate projects.***

While development assistance funding overall is declining, there are still substantial funds being disbursed by both bilateral and multilateral donors. Most donors regularly provide information about forthcoming bidding situations. This information is in print form but often can also be obtained on-line. Examples: (a) the World Bank publishes a monthly Operational Summary, which lists each of its loans and its stage of development; (b) the United Nations publication, "Development Business", lists all UN bidding situations for both goods and services, and each month includes supplements providing the same type of information concerning the Asian, African and InterAmerican development banks; (c) the US Government's "Commerce Business Daily" can be ordered weekly and by contracting categories (for example, professional services), and is available on-line; (d) USAID's Center for Development Information and Evaluation (CDIE) publishes a substantial volume of information about past, current and future USAID projects. It will be particularly important for IDLI to keep abreast of upcoming projects, so that it can decide in a timely way whether or not it wishes to bid as a prime contractor, or approach consulting firms to explore sub-contracting opportunities. The task of obtaining and evaluating these information services should be assigned to a single location within IDLI, perhaps the library. But evaluation of bidding decisions should be made by senior management, perhaps through the Strategic Planning Group or the Policy Management Group.

<u>Recommendation</u>:

- ***IDLI should expand its relationships with consulting firms which bid for donor contracts in order to be considered for sub-contract work.***

IDLI should be ideally positioned to obtain sub-contract work from the larger consulting firms, both in the US and in Europe. As a highly specialized organization, IDLI has skills not found in many consulting firms. Moreover, as trainers, IDLI is less threatening to these firms. Finally, from IDLI's perspective, sub-contracting involves far less staff work than does prime contracting. However, IDLI is not the best known of the training organizations, is geographically located far from many of the larger consultancies, and is certainly not without competition. To be successful, IDLI will have to allocate resources to establishing and maintaining relationships with prime contractors. Moreover, most of these primes are aware of upcoming bids long before they are published and always try to assemble their sub-contracting teams early. This makes it particularly important that IDLI use the publications and information services cited above to keep abreast of bidding situations so that it can take the initiative in approaching potential prime contractors. Wherever feasible, we suggest that if IDLI can position itself to know which firm is likely to have the best chance of winning a particular contract, it should enter into an exclusive agreement with that firm. Even where the agreement is not exclusive, IDLI should always take care that it is being included as a named sub-contractor, not as a member of an Access or Resource Group (in the latter case, many consulting firms use such groups as "window dressing", or to ensure that the Group member does not ally itself with a competing consultancy; but it is under no obligation to actually use IDLI's services should it be the successful bidder). We suggest also that IDLI routinely write to consulting firms which request RFPs from donor agencies (USAID almost always includes a list of such requestors, with their names, addresses and contact persons). The objective of this communication is to (a) explore sub-contracting possibilities for specific projects and (b) generally introduce IDLI and create awareness of its services.

Recommendation:

- ***The private sectors (corporations, corporate and private foundations) in selected industrialized countries should be targeted for contributions.***

To date, IDLI's support has come principally from the public sector. As noted earlier, however, public sector core funding is declining dramatically world-wide, and even public sector project funds are being severely constrained. Given this situation, IDLI would be well advised to put more time and resources into exploring fund-raising prospects within the private sector. We are of course aware that IDLI has approached the private sector in the past, with generally discouraging results. Nonetheless, the new development paradigm demands that IDLI re-visit this area of activity, and that it do so on a more organized, more consistent and less ad hoc "target of opportunity" basis. Institutional targets should be major corporations, corporate and private foundations, wealthy individuals, and major law firms. Geographic targets should be the US, Japan, Western Europe, Italy and South Korea. IDLI should consider how its "Friends" structure might be harnessed to help achieve this objective. In approaching corporations or foundations, IDLI should conduct research to determine the prospective donor's area(s) of interest and submit proposals designed to respond to those interests.

Recommendation:

- ***IDLI's penetration of Latin America and the Caribbean (LAC) should be reconsidered.***

IDLI's experience with the LAC area has been disappointing. Perhaps the person selected to lead the effort was inappropriate. Perhaps she did not receive sufficient home-office financial and logistical support. Perhaps, with the benefit of hindsight, it was a mistake to focus on enlisting LAC governments as IDLI members, and perhaps some of the countries targeted for membership were not the most important strategically or perceptually. Regardless of past history, however, it is a fact that there is increasing USAID and other donor support in at least three LAC countries: El Salvador, Nicaragua and Haiti -- and that this support is likely to continue for some years to come. It is also a fact that donor strategies in these countries emphasize legal and judicial reform. Therefore, we suggest that these countries be IDLI's target markets in this region. This effort will require (a) strengthened relationships with consulting firms for sub-contracting; (b) more systematic intelligence-gathering regarding upcoming projects; (c) approaches to donors at the in-country as well as headquarters levels; and (d) use of IDLI in-country alumni wherever possible. Further, we suggest that a member of IDLI's senior management be given responsibility -- and the resources -- to begin developing the LAC area.

Recommendation:

- ***IDLI should consider conducting workshops or courses in association with prominent organizations and institutions in respective regions/countries.***

While continuing to approach LAC (and other) governments concerning membership, IDLI should strengthen its credibility and acceptance in these countries by using "friends" groups, country or regional representatives, prime contractors, supporting letters from in-country government agencies, and working partnerships with kindred in-country NGOs.

Recommendation:

- ***IDLI should make a consistent effort to market its services to EU Directorates General (DGs) in addition to the Training DG.***

Most of IDLI's approaches to the European Union (EU) have been through the Directorate General in charge of Training. On the whole, IDLI's track record with the EU has been disappointing. Without abandoning the Training DG, we suggest that IDLI attempt to establish relationships with other units in the EU. Many of these DGs contract for training services in their respective specialized areas, for example, environment, competition, development, consumer protection and so forth. But experience indicates that the procurement process in the EU is far less transparent and far more personalized than, for example, that followed by USAID. For this reason, establishing relationships with EU personnel and raising awareness of IDLI's capabilities will be a major factor in securing contracts. This will involve a much greater commitment of resources than has been the case in the past. To begin the process, IDLI will need to become more visible in Brussels. This can be accomplished through periodic but dedicated visits.

Recommendation:

- ***IDLI should explore creative financing mechanisms to increase revenues from developing countries.***

IDLI has relied on traditional sources of donor financing to support its programs. These have come frequently from developed country government grants or dedicated scholarship programs from a limited number of developing countries. A largely unexplored source of potential revenue for IDLI can perhaps be found in developing countries themselves. While developing countries do not necessarily have resources immediately available to support IDLI's programs, they have access to and influence on donors who do have such resources. Host governments can act as IDLI advocates in discussions with donors to prioritize donor assistance needs and to program country resources.

One approach to host governments which IDLI may wish to consider is the debt-for-education swap. Human resource development is perhaps the single most common objective of developing countries and is a very high priority of host governments and donors alike. As resources become increasingly scarce, donors are selecting activities which can demonstrate direct linkages and visibility and which can leverage their funds in significant ways. Understanding this strategic approach, IDLI may wish to consider approaching donors for hard currency grants to purchase host country debts at significant discounts in local currencies. Host government agreement would be received in advance to establish the discount rates and to assure that the local currencies paid to IDLI for retiring hard currency debt would be held in-country in interest-bearing accounts and would be available to support students from that country to the Rome-based training courses or to support in-country workshops. Host country governments have, in the past, been amenable to converting local currencies back into dollars for their citizen-students who travel abroad for education.

Another approach is to convince host country governments that the local currencies they hold in tandem with donor agencies (which have been generated from foreign assistance cash transfer programs) be placed into a local fund in-country. Earnings from the local fund would be used to support IDLI programs and students from that country. The advantage of this strategy would be that funds would be available without having to solicit hard currency grants from a donor.

There are many different alternatives which can be explored in this regard. IDLI should be cognizant that host countries, as the ultimate beneficiaries of IDLI programs, have been largely untapped and represent a significant potential resource. (USAID's policies regarding debt swaps and endowments and local currency generation are included in Annex K.)

<u>Recommendation</u>:

- ***The language used by IDLI to describe itself should relate the organization to democratization, legal reform and the rule of law.***

As noted earlier, training happens to be the principal medium used by IDLI. But training is not an end in itself; it is a method of imparting information to promote a specific outcome: economic development through legal reform. Donors tend to be more interested in the <u>objectives</u> of the training than in the method. For this reason, we suggest that wherever appropriate, IDLI make a conscious effort to relate its work to the interests of donors, i.e. pointing out the relationships between competent lawyers and issues such as democratization, legal reform and the rule of law. We suggest that IDLI undertake a review of its publications and proposals to more accurately reflect these donor interests and concerns in language to which donors can relate and with which they can identify.

<u>Recommendation</u>:

- ***IDLI should optimize use of its prestigious Board of Directors.***

IDLI is fortunate to have assembled a distinguished Board of Directors. We suggest that the names, professional affiliations and countries of Board members appear on IDLI letterheads and other documents as appropriate.

3. PRODUCT DEVELOPMENT

Recommendation:

- ***IDLI should continue to be responsive to the need to customize workshops and courses for specific markets and donors.***

The authors have reviewed a number of proposals which have been custom-tailored to particular markets and particular donor interest. As project-related work becomes more dominant than core grants, this activity will need to continue and expand. And the more knowledge IDLI has of donor priorities, the better its chances of developing more responsive proposals. For example, in the Latin America/Caribbean region, the three known donor priorities are (a) environmental law (b) law and the democratic processes and (c) trade and investment (international transactions). And the three countries in which donor funding is increasing are El Salvador, Nicaragua and Haiti. Working with counterpart organizations, prime contractors, or directly with local donor agencies, IDLI should be well placed to discuss priorities with donors and then tailor proposals to their needs. As another example, corporations (and their trade and professional associations) are struggling with a range of issues in which it is in their commercial interests to have a well-trained and well-informed legal community. These issues range from environment and conservation to protection of intellectual property. IDLI should be prepared to be responsive to these market needs by designing and delivering training in these critical subjects.

Recommendation:

- ***IDLI should examine market demand, logistical implications, and costs and benefits of taking Rome-based courses "on the road".***

In the past, some shorter segments of traditionally Rome-based courses have been delivered in other venues. We suggest that IDLI examine both the market demand and the economics of delivering more extensive courses abroad. This might be done on a regional rather than country-oriented basis. While we appreciate that some of the benefits of cultural cross fertilization may be lost in the regionalization process, we suggest that this approach might be particularly useful in Central or South America, Eastern and Central Europe, and Southeast Asia.

Recommendation:

- ***IDLI should develop consultancy or advisory services as a new practice area.***

IDLI is just beginning to provide advisory services to counterpart organizations. This may well be a promising area for future growth, and should be explored in a systematic manner. This could be achieved through creation of a Task Force within the Strategic Planning Process. There is much that counterpart organizations in developing or emerging economies could learn from IDLI's experience: for example, management, fund-raising, service development, finance and administration. On the other hand, serious pursuit and implementation of institutional strengthening contracts will require more advisory resources than are currently present and available at IDLI. Therefore, one of the major questions to be answered -- aside from gauging market demand -- is how can advisory or consulting resources be harnessed without substantial front-end investment and without putting further stresses on already stretched in-house staff.

Recommendation:

- ***IDLI should explore the earnings potential of a publications program.***

For many international organizations and PVOs, sales of information represent a source of revenue as well as recognition. In many instances, this is revenue generated on an opportunity cost basis, i.e. much of the material to be published has already been created for other uses. While IDLI has a wealth of material that fits this description, its past forays into the publications field have been without notable success. We suggest that what may be missing in this equation is a professional and reputable publisher who is prepared to take IDLI's raw material, and edit, package and distribute it, with IDLI receiving royalty income. We do not suggest that IDLI enter the publishing business; but we believe that IDLI might usefully explore an on-going arrangement with a publisher such as Graham & Trotman or Pergamon Press in London, or specialized legal publishers in the US or Europe.

Another possibility for new revenue generation may be selling access to IDLI's library resources and on-line services. It appears that sufficient demand for such information exists and that IDLI may be in a position to provide it. The sale of services could well help to cover the administrative costs of the library.

4. HUMAN RESOURCES/MANAGEMENT FOR SUSTAINABILITY

Recommendation:

- ***IDLI should consider appointing a professional business development executive.***

It is clear that (a) IDLI's fund-raising efforts since its founding have been outstanding; (b) much of this fund-raising activity has not been systematically planned, but rather operated on a "target of opportunity" basis; (c) there have always been far more opportunities to pursue than people to pursue them; and (d) the nature and geography of fund-raising is now undergoing fundamental change. For these reasons, we suggest that IDLI now give serious consideration to strengthening its fund-raising capabilities by recruiting a Deputy Director/Development as a permanent member of staff. The primary mission of this new person will be to assist the Director, who should remain IDLI's principal fund-raiser. The Director and the Deputy Director/Development should have complimentary skills and networks. The precise division of labor between the two will remain to be worked out. But, for example, the Director might take primary responsibility for government donors, while the new executive utilizes his/her background and experience with corporations and corporate and private foundations. If the new person has experience in developing new product lines, for example, consultancy or publishing, this experience can be used; if not, some of the Director's time can be freed up to explore these new areas. Moreover, as IDLI builds the capacity of its US corporation, it may be feasible to consider transferring the Deputy Director/Development to this venue. The Director and the Deputy Director/Development should be supported by an administrative/secretarial person dedicated to the fund-raising area. An illustrative Position Description of the Deputy Director/Development is included in Annex J.

Recommendation:

- ***All PLCs should share responsibility for generating revenue.***

While the Director, and the proposed new Deputy Director, will have primary fund-raising responsibility, all professional staff should participate in the process. For these members of staff, the new executive should be regarded as a valuable resource to counsel, reinforce or lead on each particular new business development initiative.

Recommendation:

- ***IDLI should consider training a group of "stand-by" PLCs to respond to business opportunities as they arise.***

IDLI has a small staff, limited funds and a huge palette. The consequence is that ways and means must be found to "clone" staffers and thus free them somewhat to explore developmental opportunities. Perhaps the classroom itself may be the optimal venue for use of "clones". IDLI has already used many guest lecturers; some of them may be interested in taking on broader teaching responsibilities. IDLI has also identified a number of individuals who appear eager to become more deeply involved in coursework. Some of these would work on an "as needed" contract basis; others might be more interested in full-time involvement. In either case, they would need to be thoroughly trained in IDLI's style and method of training. If this can be achieved without substantial front-end investment, more of IDLI's existing resources can, over time, be deployed in new product or new business development.

Recommendation:

- ***IDLI should reconsider the usefulness of its anglophone and francophone nomenclature.***

These designations were doubtless useful at IDLI's inception. However, due to the evolution of the Institute, IDLI may now wish to re-visit this issue. While the Deputy Directors responsible for these two Divisions would continue to be responsible for them, each of them has taken on new activities in new geographies. For example, the head of the francophone Division is active in developing the Asian market; the head of the anglophone Division is operating in Central and Eastern Europe. The existing nomenclature adds nothing in these new venues and in fact may be unnecessarily limiting. It may be more useful, therefore, from an organizational and marketing perspective, to establish geographic responsibilities, i.e. Asia, Latin America, Africa, Europe, etc.

5. GOVERNANCE: ROLE OF THE BOARD

Recommendation:

- *IDLI should re-examine the role and composition of the main Board.*

IDLI is fortunate to have a prestigious Board of Directors. However, it is not a fund-raising Board, and this may be one of the areas where the Board could and should be strengthened. First, IDLI's location in Rome would seem to point to a need for a prominent Italian to interface with the GOI. Second, as the private sector begins to play an increasingly important funding role, IDLI's Board might benefit from inclusion of one or two well known business persons. Third, there may be a need for an additional US national on the Board, especially if IDLI elects to make its 501-C-3 operational. We suggest that IDLI's senior management consider these issues and make recommendations to the Executive Committee of the Board.

Recommendation:

- *Consideration should be given to creation of a Development Committee of the Board.*

If the above suggestions are implemented, the Board will begin to take on an active developmental role in addition to its programmatic and fiduciary roles. We suggest that this new role be reflected in the formation of a Development Committee of the Board to provide introductions and entree, guidance and general oversight vis-a-vis IDLI's fund-raising activities.

6. PRICING OF SERVICES/BUDGETING

Recommendation:

- *IDLI should be prepared to invest more in new business development.*

IDLI currently has no explicit budget for fund-raising or development, except for the travel and subsistence of the Director. We suggest that Business Development or Fund-Raising be included as a line item in the budget, and that this budget reflect the allocated costs of the executive and support time and overheads involved, not merely the travel and per diem expenses currently reflected. The development budget will be a natural fall-out of the Strategic Planning Process, since it is through this process that activities will be prioritized, costed and monitored over the life of the five year plan. The Strategic Planning Group should forecast and conduct quarterly reviews of actual costs and revenues against forecasts. It is likely that IDLI will need to increase its developmental expenditures to more fully exploit its opportunities. This should be approached cautiously, but viewed as a necessary investment in the organization's future.

Recommendation:

- ***Heads of Divisions should take more responsibility for new business development.***

All members of the PMG, and particularly the two Deputy Directors, should share responsibility for new business development, and should have explicit budgets for this purpose. These budgets should be based on activity proposals submitted to the Strategic Planning Committee annually. Once approved, the Deputy Directors should have discretion over these funds, but should of course be accountable for reporting on their use and effect on a quarterly basis through the Strategic Planning Process.

Recommendation:

- ***IDLI needs to know the real (fully burdened) costs as well as revenues of each of its products.***

IDLI has raised a number of questions about the pricing of its various services. As has been discussed with management, because of the structure of the current accounting systems, the authors are not in a position to know the real cost of any of IDLI's services. The reason is that salaries are not proportionately allocated by activity, nor is it known whether a "profit" or surplus element has been added to the final product price. IDLI is quite correct in its desire to know whether it is earning or losing money on any particular activity, but getting to the answer will involve (a) professional and support staff keeping time records over a 2-3 month period; (b) the assignment of a fully burdened hourly charge to each staff person; and (c) the development and integration of a cost accounting function to the existing administrative/financial reports. Once the true product cost can be determined, IDLI can then assess whether or not it is making or losing money for each of its services, and its position in the marketplace vis-a-vis its competitors. We suggest that the Institute's auditors design a practical cost accounting system. The diskette included with this Report contains a financial model which IDLI can manipulate to create a variety of revenue and cost scenarios. This model is shown in Insert A of this Report. We have also designed a simple time-keeping form which is included in Annex F.

Recommendation:

- ***IDLI should conduct an analysis of costs and benefits of "consultancies".***

As a potential area of new business development, IDLI should be aware of the true costs involved in providing consulting or advisory services to kindred organizations. These costs should be examined in terms of both new product development and new business development. Ideally, this activity should be priced competitively and produce surplus. But even if the activity is continued/expanded as an investment because of its capacity to lead to new training-centered activity, at least management should be aware of the size of its investment.

Recommendation:

- ***A Cost Containment Plan should be developed.***

Closely monitoring costs against forecasts is an important feature of the Strategic Planning Process. Currently, costs are rising somewhat, and this trend can be expected to continue if the recommendations in this report are implemented. The Strategic Planning Committee should target any expenditure that can be reduced or eliminated, but should not sacrifice genuine investment in the future for the sake of short-term economies.

Recommendation:

- ***A Revenue Budget should be prepared.***

While Administration now prepares revenue budgets, these are not routinely distributed as management information tools. We suggest that this is not only useful but critical information for management. The revenue budget should be an integral part of the Strategic Planning Process. Revenues should be included on a forecast basis and updated by actuals quarterly.

Recommendation:

- ***Workshops should be included in revenue and expense budgets.***

Although we appreciate the difficulty of knowing in advance precisely how many workshops will be held in any given year, omission of cost and revenue forecasts for this activity creates an incomplete financial picture. We therefore suggest that, once the actual costs have been determined, they (as well as revenue) be included in the budget on a forecast basis and updated by actuals quarterly.

PART V:

SUMMARY OF IMPLEMENTATION RECOMMENDATIONS

1. STRATEGIC PLANNING

- IDLI should develop a Strategy and a 5-year Action Plan for Sustainability.
- IDLI should organize a Strategic Planning Group and designate a PLC to manage and monitor the strategic planning process.
- IDLI should reinforce its efforts to obtain endowment contributions for unrestricted core expenses and for program expenses from multilateral donors, bilateral donors and host country governments.

2. BUSINESS DEVELOPMENT

- Further development of "Friends of IDLI" should be given high priority.
- IDLI should consider appointing regional or country representatives to maintain in-region and in-country contacts and keep it up to date on new business development opportunities.
- IDLI should consider constituting a separate Board of Directors for its US 501-C-3 corporation.
- IDLI should keep itself informed of upcoming bids for public sector contracts in order to bid either as a prime contractor or as a sub-contractor to another firm on appropriate projects.
- IDLI should expand its relationships with consulting firms which bid for donor contracts in order to be considered for sub-contract work.
- The private sectors (corporations, corporate and private foundations) in selected industrialized countries should be targeted for contributions.
- IDLI's penetration of Latin America and the Caribbean (LAC) should be reconsidered.
- IDLI should consider conducting workshops or courses <u>in association with</u> prominent organizations and institutions in respective regions/countries.

- IDLI should make a consistent effort to market its services to EU Directorates General (DGs) in addition to the Training DG.

- IDLI should explore creative financing mechanisms to increase revenues from developing countries.

- The language used by IDLI to describe itself should relate the organization to democratization, legal reform and the rule of law.

- IDLI should optimize use of its prestigious Board of Directors.

3. **PRODUCT DEVELOPMENT**

- IDLI should continue to be responsive to the need to customize workshops and courses for specific markets and donors.

- IDLI should examine market demand, logistical implications, and costs and benefits of taking Rome-based courses "on the road".

- IDLI should develop consultancy or advisory services as a new practice area.

- IDLI should explore the earnings potential of a publications program.

4. **HUMAN RESOURCES/MANAGEMENT FOR SUSTAINABILITY**

- IDLI should consider appointing a professional business development executive.

- All PLCs should share responsibility for generating revenue.

- IDLI should consider training a group of "stand-by" PLCs to respond to business opportunities as they arise.

- IDLI should reconsider the usefulness of its anglophone and francophone nomenclature.

5. **GOVERNANCE: ROLE OF THE BOARD**

- IDLI should re-examine the role and composition of the main Board.

- Consideration should be given to creation of a Development Committee of the Board.

6. PRICING OF SERVICES/BUDGETING

- IDLI should be prepared to invest more in new business development.
- Heads of Divisions should take more responsibility for new business development.
- IDLI needs to know the real (fully burdened) costs as well as revenues of each of its products.
- IDLI should conduct an analysis of costs and benefits of "consultancies".
- A Cost Containment Plan should be developed.
- A Revenue Budget should be prepared.
- Workshops should be included in the budgeting process on a forecast basis.

ANNEX A

PERSONS CONSULTED

ANNEX A

PERSONS CONSULTED

Members of IDLI Staff

Gilles Blanchi, Deputy Director
Laleh Brown, Administration/Executive Assistant
Alexandre Cordahi, Senior Program Legal Counsel
Ann Dehlin, Administrative Officer
Pasquale Ferraro, Deputy Director
Xavier Forneris, Program Legal Counsel
L. Michael Hager, Director
Yohannes Kassahun, Senior Program Legal Counsel
Moray McLaren, Project Legal Assistant
Silvia Lagana, Logistics and Evaluation Officer
Stephanie Lettieri, Administration/Executive Assistan
William T. Loris, Deputy Director
Addelorata Marsilii, External Relations Officer
Fiamma Spinelli, Logistics and Evaluation Officer
Claudio Turco, Project Legal Counsel

Members of IDLI Board of Directors

Minister Enrico De Maio
Coordinator for Multilateral Affairs
General Directorate for Development Cooperation
Ministry of Foreign Affairs
Government of Italy, Rome

Dr. Ibrahim F.I. Shihata, Chairman
Senior Vice President and General Counsel
The World Bank, Washington, DC

Hugh Smith
USAID Representative, Rome

ANNEX B

DOCUMENTS CONSULTED

ANNEX B

DOCUMENTS CONSULTED

Environmental Law Training Project description.
Capacity Building for Lawyers in Economic Development: A Proposal for Donor Agencies.
Formacion Juridica Para el Desarrollo Economico y la Modernizacion del Estado en America Latina y el Caribe.
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USAID Memorandum from Rebecca Maestri, April 5, 1994.
Final Report to USAID Office of Emerging Markets, 1994.
Workplan submitted to USAID Office of Emerging Markets, 1994.
Reprints of newspaper articles, Wall Street Journal (1989) and International Herald Tribune (1992).

ANNEX C

CONSULTING TEAM

ANNEX C

CONSULTING TEAM

WILLIAM FISHER has over 30 years' experience as a senior corporate manager and international development consultant. Mr. Fisher has served as an international marketing consultant to numerous multinational corporations and financial institutions, and has carried out development assistance assignments for donor organizations and government agencies in Latin America, the Caribbean region, Europe, North Africa and Southeast Asia. His fields of specialization are institutional strengthening, strategic planning, and marketing communications and outreach.

Mr. Fisher served in the Kennedy Administration as Special Assistant to the Secretary of Commerce, where he played a major role in developing and implementing the US Export Expansion Program. He has served as team leader and senior consultant for the design, management and evaluation of development assistance projects in the Far East, Europe, Latin America and the Caribbean for public and private donor agencies and governments including the U.S. Agency for International Development (USAID), the European Union (EL), the Center for Industrial Development (CID) and the Fund for Multinational Management Education (FMME).

For these organizations, he has carried out economic development and institutional strengthening project design and management assignments in Guatemala, the Dominican Republic, El Salvador, Peru, and Ecuador; has designed and delivered training programs in Egypt; has conducted program evaluations in Argentina, Uruguay, Costa Rica, Bolivia, Guatemala, Dominican Republic, the Eastern Caribbean and Thailand; has worked in the technology transfer field in the ASEAN countries; and has conducted research, market analysis and communications and outreach programs for the British and Japanese Governments.

KENNETH A. LANZA is a U.S. Foreign Service Officer serving as Deputy Director of the Office of Economic and Institutional Reform in USAID's Global Bureau in Washington, DC. Mr. Lanza has served as USAID's Chief of the Private Sector in the Dominican Republic and in Costa Rica, where he designed, implemented and managed large US foreign assistance programs. Mr. Lanza's areas of specialty include privatization, banking and financial reform, export and investment promotion, and institutional development.

Before joining USAID, Mr. Lanza held executive positions in OHS Transport of London, England, Burroughs Corporation and CBS Inc.

Mr. Lanza has 30 years of living and working experience in developing countries, including Turkey, Pakistan, Afghanistan, Lebanon, the Dominican Republic and Costa Rica.

He holds an A.B. degree from Colgate, an MBA from the University of Miami, and an MA in International Development Policy from Duke University.

ANNEX D

SCOPE OF WORK

Scope of Work

International Development Law Institute Sustainability Strategy

I. Introduction

USAID has agreed to finance a study which examines issues concerned with the International Development Law Institute (IDLI)long-term sustainability. The Economic Growth Center of USAID's Global Bureau, Office of Economic and Institutional Reform (G/EG/EIR) will carry out the study. The consultancy will be financed by the Bureau's Private Enterprise Development Project (PEDs III).

The IDLI was founded in March 1983. A grant from USAID to the America-Mideast Education and Training Services, Inc. which amended a cooperative agreement for $989,000 provided IDLI with its initial financing. IDLI was established for the purposes of educating developing country legal advisors and lawyers to participate constructively in the development process. The Institute listed the following expected achievements as part of the its courses and seminar objectives:

-more efficient use of scarce development resource

-more effective project implementation and,

-fair international or bilateral agreements for developing country governments.

IDLI views it training and transmittal of information as a process in which technology is transferred, and also provides practical skills and the opportunity for developing country legal advisors to understand and use the rules, procedures and practices which underlie international transactions.

II. Tasks

The purpose of the study is to examine and assess IDLI's capacity to be financially self-sustaining given its current operating policies, procedures and level of demand for its current services. The elements that are to be examined for the study and for developing a strategy for institutional sustainabilty are expected to include, but are not limited to, the following tasks:

a. Benchmarking Appraisal:

This task will assess the current state of the IDLI's organizational development. This benchmarking exercise will evaluate institutional issues such as administration, demand for services, finance and budgets, human resource capacities, general management and governance. The results of the appraisal stage are expected to provide a foundation of general information with sufficient levels of detail from which a strategy for institutional sustainability may be outlined. Illustratively, the components to be reviewed during the benchmarking exercise include:

1. Administration: This section will examine IDLI's organizational and administrative structures including chain-of -command, personnel responsibilities, span-of-control, approval processes, facilities appropriateness and administrative efficiencies.

2. Demand for Services: A key issue for developing a cogent strategy for sustainability involves understanding the basis of and demand for the services currently provided. Therefore, an assessment of the nature and scope of services offered will be developed as well an analyses of IDLI's clients.

3. Finance and Budgets: At the core of institutional longevity is an organization's financial soundness. IDLI's current budget/financial situation will be examined to gain an understanding of its financial strengths and weaknesses and its source and use of funds.

4. Human capacity: An overview of the qualifications of the staff, trainers and their responsibilities will be compiled as part of understanding the institutional capacities of IDLI.

5. Management and Governance: Organizational policies will be reviewed to assess their contribution to encouraging institutional self-sufficiency or to constraining it. The role and responsibilities of management and of the Board of Directors will also be examined as well as the organizational dynamics between them and with IDLI's constituencies.

b. Sustainability Strategy Development:

This task will use as its starting point the benchmarking appraisal which examined the essential factors relating to the capacity of the IDLI to evolve into a self-sustaining organization. Designing a strategy to shift the institutional framework from donor dependency to a self-sustaining organization frequently requires altering organizational attitudes and behavior, perspectives, plans and long-term vision. Consequently, some of the elements of the strategic plan to be considered will include:

1. Statement of Mission Goals and Vision: The strategy will develop recommendations for a mission, goals and a long-term vision which is acceptable to IDLI management.

2. Financial Self-Sufficiency: A plan for moving from dependency to financial self-sufficiency will be discussed in the context an overall organizational strategy.

3. Governance: Changes to policies, regulations and administrative processes will also be considered to conform with the organization's new sustainability mandate.

4. Priority Services: Demand-driven services will be identified and a strategy for prioritizing programs developed.

5. Constituencies: Strategies for identifying current and potential constituents will help lay the foundation for generating resources. An systematic approach to profiling clients and constituents will be outlined.

6. Pricing: The cost of providing services, the revenue generated and the competitive markets will be discussed for the purpose of determining pricing policies for niche markets and services demanded.

7. Cost Recovery: There may be opportunities for recuperating costs generated from the sale of services. Recommendations for approaches to cost recovery will be discussed in the context of an overall strategic direction.

8. External Funding: Strategies will be reviewed for identifying potential sources of external funding, i.e., other donors, collaboration with other NGO's, international organizations etc.

9. Marketing and Delivery of Services: An examination of the methodology used to market IDLI's services and the vehicles for delivering them will also be reviewed in the context of strategy development.

10. Administration: assessments of the process and systems of accounting and financial management, management information system design, physical infrastructure, management and organizational structure and policy development will be discussed as critical elements in framing a self-sufficiency strategy.

III. Timing and Methodology

On-sight research and interviews for the study will be carried out in Rome, Italy from May 28 through June 9, 1995 (12 person-days). The team will interview IDLI staff, managers board directors, participants, government officials, clients, potential donors and constituents. Written evaluations of IDLI and its published materials will be reviewed. Policies and administrative procedures will be examined with management during this on-sight phase of the study.

An additional 5 person-days (June 12 through June 16) are required in Washington, D.C. for the team to draft the findings of the benchmarking and strategy development research.

IV. Reports:

The consultant will provide a draft written report in English to AID's E/EG/EIR for written review and comments. A final report will be delivered by the team to E/EG/EIR within two weeks following AID's approval of the draft document.

V. Key Personnel

Consultant services will be procured through the PEDS III Project. E/EG/EIR will assign an AID Official to accompany the consultant and to contribute to the assessment and strategy recommendations.

ANNEX E

SUMMARY OF SUSTAINABILITY INITIATIVES OVER TIME

ANNEX E: SUMMARY OF SUSTAINABILITY INITIATIVES OVER TIME

INITIATIVE	YEAR 1				YEAR 2				YEAR 3				YEAR 4				YEAR 5			
1. STRATEGIC PLANNING																				
Develop Strategy and 5-year Action Plan for Sustainability.																				
Designate PLC to manage and monitor strategic planning process.																				
2. BUSINESS DEVELOPMENT																				
Develop Friends of IDLI.																				
Expand relationships with consulting firms for sub-contract work																				
Keep informed of upcoming bids to either prime or approach primes for subbing.																				
Target private sectors for contributions.																				
Appoint regional or country representatives.																				

INITIATIVE	YEAR 1				YEAR 2				YEAR 3				YEAR 4				YEAR 5			
Customize workshops and courses to needs of individual markets.																				
Explore target countries in Latin America/Caribbean.																				
Constitute separate Board for US 501-C3.																				
Continue to approach major countries membership. Conduct workshops or courses <u>in association with</u> prominent organizations and institutions to provide interim credibility and entree.																				
Market services to EU Directorates General <u>in addition to</u> the Training DG.																				
3. PRODUCT DEVELOPMENT																				
Customize workshops and courses to needs of individual markets and/or clients.																				
Examine costs and benefits of taking Rome-based courses "on the road".																				

INITIATIVE	YEAR 1				YEAR 2				YEAR 3				YEAR 4				YEAR 5			
4. HUMAN RESOURCES/ MANAGEMENT FOR SUSTAINABILITY																				
Devolve specific revenue generating activities to PLCs.																				
Determine need for Director of Development and administrative/secretarial support. Search/hire if appropriate.																				
Train "stand-by" PLC group.																				
5. GOVERNANCE: ROLE OF THE BOARD																				
Consider role and composition of main Board. Discuss with Executive Committee.																				
Consider creating fund-raising or development committee of the Board.																				
6. PRICING OF SERVICES/BUDGETING																				

INITIATIVE	YEAR 1				YEAR 2				YEAR 3				YEAR 4				YEAR 5			
Prepare new business development budget. Forecast and conduct quarterly reviews of costs and revenues against forecasts.																				
Develop business development budgets for Division heads.																				
Integrate Business Development as line item in budget.																				
Introduce cost accounting function to establish fuliy burdened costs and revenues for each IDLI product.																				
Conduct comparison of costs and benefits of "consultancies".																				
Establish direct and indirect expenses plus a margin for "fee" (surplus) for all products.																				
Develop/introduce Cost Containment Plan.																				
Produce and distribute revenue budget.																				
Include Workshop costs and revenue forecasts in budget.																				

ANNEX F

SUGGESTED FORM FOR TIME KEEPING

ANNEX F. SUGGESTED FORM FOR TIME-KEEPING

NAME:________________**DEPT.**_______________**WEEK ENDING:**_____

PROJECT	DAYS/HOURS						
	1	2	3	4	5	6	7
1.							
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9.							
10.							
11.							
12.							
13.							
14.							
15.							

ANNEX G

SUGGESTED FORMAT FOR PROJECT/ACTIVITY EVALUATION

ANNEX G

SUGGESTED FORMAT FOR PROJECT/ACTIVITY EVALUATION

The form on the following page has been designed to present a summary of the risk/reward potential of each project or activity being proposed to the Strategic Planning Group. It is intended that this summary will be backed by objective research which will assist the Group to decide whether or not to go forward with a particular activity, or modify or delay it. The Evaluation Criteria shown are illustrative. Other/additional criteria may be included.

PROJECT/ACTIVITY EVALUATION SUMMARY

ACTIVITY/PROJECT DESCRIPTION:______________________**DATE:**__________

EVALUATION CRITERIA	DETAILS/STATUS
SUPPORTS MISSION	
SUPPORTS STRATEGY	
EXPANSION/NEW ACTIVITY	
DONOR(S)	
MARKET/CLIENTS	
MARKET SIZE	
MARKET LOCATION/GEOGRAPHY	
COMPETITION/PRICING	
ESTIMATED COST	
ESTIMATED REVENUE	
TIMEFRAME	
MANAGEMENT PERSONNEL	
SUPPORT PERSONNEL	
COLLABORATORS	
RISK/REWARD POTENTIAL	
PRIORITY STATUS	

ANNEX H

SUGGESTED STEPS IN STRATEGIC PLANNING PROCESS

ANNEX H

SUGGESTED STEPS IN STRATEGIC PLANNING PROCESS

There are many ways to approach the Strategic Planning Process. The precise order of tasks should be flexible and adapted to each organization's particular management style and corporate culture. The 20-step chronology below provides a basis for such adaptation which many organizations have found useful.

Step 1: Initiation of Strategic Planning Process (SPP) is announced and explained to staff, i.e. objectives, how it will work, etc.

Step 2: Strategic Planning Committee (SPC) constituted (Policy Management Group [plus others?]) and holds initial meeting.

Step 2: SPG lists <u>all</u> current activities in such categories as New Business Development, New Product Development, Finance and Administration, etc.

Step 3: Task Forces formed to calculate current costs, revenues and non-financial (intangible) benefits of each activity.

Step 4: SPG lists all <u>proposed or new</u> activities in categories above.

Step 5: Task Forces review proposed new activities and initiatives to ensure that they are consistent with criteria set out Annex G of this report, and that sufficient information is available on which to make informed decisions.

Step 6: Task Forces then subject each proposed new activity to the Risk/Reward test described Annex I of this report.

Step 7: Task Forces report findings of Steps 3-6 to SPG for discussion.

Step 8: SPG assesses potential Risks and Rewards of each activity.

Step 9: SPG assigns priorities to current and planned activities, taking account of suggested criteria including cost and availability of management and implementation personnel.

Step 10: SPG prepares timelines for all activities using form suggested in Annex E.

Step 11: Task Forces prepare step-by-step implementation or work plan for each new activity, including costs, anticipated revenues, personnel, timing, benchmarks for monitoring, performance evaluation, and mid-course corrections.

Step 12: Implementation Plans submitted to SPG for discussion/ratification/modification.

Step 13: SPG submits initiatives requiring Board approval to Executive Committee for discussion.

Step 14: SPG assigns implementation responsibilities and implementation begins.

Step 15: SPG prepares memorandum to Board and Staff describing Five-year Strategic Plan, and discusses Plan at Staff Meeting.

Step 16: SPG conducts quarterly substantive and financial reviews of current and new activities, variances from Workplan, Budget, and other performance indicators and, where appropriate, makes suggestions for modifications.

Step 17: SPG conducts annual review of Strategic Plan performance, identifies achievements, failures, constraints.

Step 18: Second year plan proposed in detail, discussed and finalized.

Step 19: Second year plan reported to Staff and Board.

Step 20: Process begins again.

ANNEX I

RISK/REWARD MATRIX

Strategic Planning Matrix Map

	High-Risk	Medium-Risk	Low-Risk
High-Reward, Low Expense			
High-Reward, High Expense			
Low-Reward, Low Expense			
Low-Reward, High Expense			

Once IDLI uses the evaluation criteria sheet for each activity it is considering, the planning process should include a "mapping" of each activity into one of the above categories. Clearly, a great deal of intuition, experience and subjectivity are involved. Nonetheless, the mapping exercise will provide graphic representation of the risk categories in which IDLI's activities are clustered. The top right quadrant represents the best prospects, while the bottom left quadrant represents the most risk and least likely payoffs. This simple tool can be very valuable in understanding what current risks/opportunities/costs are involved as well as determining and assessing potential opportunities.

ANNEX J

ILLUSTRATIVE POSITION DESCRIPTION

ANNEX J

ILLUSTRATIVE POSITION DESCRIPTION

Deputy Director/Business Development

Experience Summary:

The successful applicant for this position will have been associated with a similar institution or organization in a senior developmental or fund-raising capacity for at least five years, and have a successful and verifiable record of achievement in these fields. S(he) will have a broad knowledge and network of relationships in international organizations and their donor communities, including bilateral and multilateral development assistance agencies, corporations and corporate foundations, and consulting firms and non-governmental organizations involved in development. Experience in the US and in developing countries would be desirable, as would proposal and grant-writing, and public speaking.

Responsibilities:

- Work with Strategic Planning Committee to develop fund-raising strategies, and systematic action plans and time-tables.
- Identify and approach funding sources on a world-wide basis.
- Work with PMG to develop and/or modify products and services to meet donor needs.
- Provide guidance and counsel to further fund-raising activities of members of the Board of Directors and Staff.
- Gather and disseminate information regarding forthcoming projects being planned by multilateral and bilateral donor agencies.

Education: Advanced degree in law or business or equivalent.

Languages: Fluency in Italian or French as well as English are essential.

Position Reports to: Director.

Staff: Administrative Assistant/Secretary.

Based in: Rome/Washington.

ANNEX K

USAID POLICIES ON DEBT SWAPS, ENDOWMENTS, AND LOCAL CURRENCY

Mike – you could easily link your legal training into an "environment" framework to be eligible under this statute! (See #6)

Chapter 7—Debt-For-Nature Exchanges [364]

Sec. 461.[365] Definition.—For purpose of this chapter, the term "debt-for-nature exchange" means the cancellation or redemption of the foreign debt of the government of a country in exchange for—

(1) that government's making available local currencies (including through the issuance of bonds) which are used only for eligible projects involving the conservation or protection of the environment in that country (as described in section 463); [366] or

(2) that government's financial resource or policy commitment to take certain specified actions to ensure the restoration, protection, or sustainable use of natural resources within that country; or

(3) a combination of assets and actions under both paragraphs (1) and (2).

Sec. 462.[367] Assistance for Commercial Debt Exchanges.—(a) The Administrator of the Agency for International Development is authorized to furnish assistance, in the form of grants on such terms and conditions as may be necessary, to nongovernmental organizations for the purchase on the open market of discounted commercial debt of a foreign government of an eligible country which will be canceled or redeemed under the terms of an agreement with that government as part of a debt-for-nature exchange.

(b) Notwithstanding any other provision of law, a grantee (or any subgrantee) of the grants referred to in subsection (a) may retain, without deposit in the Treasury of the United States and without further appropriation by Congress, interest earned on the proceeds of any resulting debt-for-nature exchange pending the disbursements of such proceeds and interest for approved program purposes, which may include the establishment of an endowment, the income of which is used for such purposes.

Sec. 463.[368] Eligible Projects.—(a) The Administrator of the Agency for International Development shall seek to ensure that debt-for-nature exchanges under this chapter support one or more of the following activities by either the host government, a local private conservation group, or a combination thereof:

(1) restoration, protection, or sustainable use of the world's oceans and atmosphere;

(2) restoration, protection, or sustainable use of diverse animal and plant species;

[364] Chapter 7, as enacted in the Foreign Assistance Act of 1966 (Public Law 89-583), titled: "Joint Commissions on Rural Development", was repealed by sec. 604 of the International Development and Food Assistance Act of 1978 (Public Law 95-424; 92 Stat. 961). A new ch. 7 was added by sec. 711 of the International Development and Finance Act of 1989 (Public Law 101-240; 103 Stat. 2521).

[365] 22 U.S.C. 2281. All sections in ch. 7 are misnumbered, as enacted by the International Development and Finance Act of 1989 (Public Law 101-240; 103 Stat. 2521). Should read "Sec. 471".

[366] All sections in ch. 7 are misnumbered, as enacted by the International Development and Finance Act of 1989 (Public Law 101-240; 103 Stat. 2521). Reference should read "section 473".

[367] 22 U.S.C. 2282. All sections in ch. 7 are misnumbered, as enacted by the International Development and Finance Act of 1989 (Public Law 101-240; 103 Stat. 2521). Should read "Sec. 472".

[368] 22 U.S.C. 2283. All sections in ch. 7 are misnumbered, as enacted by the International Development and Finance Act of 1989 (Public Law 101-240; 103 Stat. 2521). Should read "Sec. 473".

(3) establishment, restoration, protection, and maintenance of parks and reserves;

(4) development and implementation of sound systems of natural resource management;

(5) development and support of local conservation programs;

(6) training programs to strengthen conservation institutions and increase scientific, technical, and managerial capabilities of individuals and organizations involved in conservation efforts;

(7) efforts to generate knowledge, increase understanding, and enhance public commitment to conservation;

(8) design and implementation of sound programs of land and ecosystem management; and

(9) promotion of regenerative approaches in farming, forestry, fishing, and watershed management.

(b)(1) In cooperation with nongovernmental organizations, the Administrator of the Agency for International Development shall seek to identify those areas, which because of an imminent threat, are in particular need of immediate attention to prevent the loss of unique biological life or valuable ecosystem.

(2) The Administrator of the Agency for International Development shall encourage as many eligible countries as possible to propose such exchanges with the purpose of demonstrating to a large number of governments the feasibility and benefits of sustainable development.

Sec. 464.[369] Eligible Countries.—In order for a foreign country to be eligible to participate in a debt-for-nature exchange under this chapter, the Administrator of the Agency for International Development shall determine that—

(1) the host country is fully committed to the long-term viability of the program or project that is to be undertaken through the debt-for-nature exchange;

(2) a long-term plan has been prepared by the host country, or private conservation group, which adequately provides for the long-term viability of the program or project that is to be undertaken through the debt-for-nature exchange or that such a plan will be prepared in a timely manner; and

(3) there is a government agency or a local nongovernmental organization, or combination thereof, in the host country with the capability, commitment, and record of environmental concern to oversee the long-term viability of the program or project that is to be undertaken through the debt-for-nature exchange.

Sec. 465.[370] Terms and Conditions.—(a) The terms and conditions for making grants under this chapter shall be deemed to be fulfilled upon final approval by the Administrator of the Agency for International Development of the debt-for-nature exchange, a certification by the nongovernmental organization that the host government has accepted the terms of the exchange, and that an

[369] 22 U.S.C. 2284. All sections in ch. 7 are misnumbered, as enacted by the International Development and Finance Act of 1989 (Public Law 101-240; 103 Stat. 2521). Should read "Sec. 474".

[370] 22 U.S.C. 2285. All sections in ch. 7 are misnumbered, as enacted by the International Development and Finance Act of 1989 (Public Law 101-240; 103 Stat. 2521). Should read "Sec. 475".

agreement has been reached to cancel the commercial debt in an agreed upon fashion.

(b) Grants made under this section are intended to complement, and not substitute for, assistance otherwise available to a foreign country under this Act or any other provision of law.

(c) The United States Government is prohibited from accepting title or interest in any land in a foreign country as a condition on the debt exchange.

Sec. 466.[371] **Pilot Program for Sub-Saharan Africa.**—(a) The Administrator of the Agency for International Development, in cooperation with nongovernmental conservation organizations, shall invite the government of each country in sub-Saharan Africa to submit a list of those areas of severely degraded national resources which threaten human survival and well-being and the opportunity for future economic growth or those areas of biological or ecological importance within the territory of that country.

(b) The Administrator of the Agency for International Development shall assess the list submitted by each country under subsection (a) and shall seek to reach agreement with the host country for the restoration and future sustainable use of those areas.

(c)(1) The Administrator of the Agency for International Development is authorized to make grants, on such terms and conditions as may be necessary, to nongovernmental organizations for the purchase on the open market of discounted commercial debt of a foreign government of an eligible sub-Saharan country in exchange for commitments by that government to restore natural resources identified by the host country under subsection (a) or for commitments to develop plans for sustainable use of such resources.

(2) Notwithstanding any other provision of law, a grantee (or any subgrantee) of the grants referred to in section (a) may retain, without deposit in the Treasury of the United States and without further appropriation by Congress, interest earned on the proceeds of any resulting debt-for-nature exchange pending the disbursements of such proceeds and interest for approved program purposes, which may include the establishment of an endowment, the income of which is used for such purposes.

[371] 22 U.S.C. 2286. All sections in ch. 7 are misnumbered, as enacted by the International Development and Finance Act of 1989 (Public Law 101-240; 103 Stat. 2521). Should read "Sec. 476".

NOTE.—Section 6(a) of the International Narcotics Control Act of 1992 (Public Law 102-583; 106 Stat. 4932; 22 U.S.C. 2291h note) provided the following change in statutory references:

"(a) STATUTORY REFERENCES TO ANNUAL REPORTS, CERTIFICATIONS, AND DEFINITIONS.—After September 30, 1994, any reference in any provision of law to section 489 or 490 of the Foreign Assistance Act of 1961 shall be deemed to be a reference to the corresponding provision of section 489A or 490A, respectively, unless the context requires otherwise. Any reference in any provision of law enacted before the date of enactment of this Act to section 481(e) or section 481(i) of that Act shall be deemed to be a reference to section 489 or section 481(e) (as amended by subsection (b)(3) of this section), respectively; and any reference in any provision of law enacted before the date of enactment of this Act to section 481(h) of that Act shall be deemed, as of October 1, 1992, to be a reference to section 490.".

Sec. 8 of that Act provided the following waiver for fiscal years 1992 through 1994:

"SEC. 8. WAIVER OF RESTRICTIONS FOR NARCOTICS-RELATED ECONOMIC ASSISTANCE.

"For fiscal years 1992 through 1994, narcotics-related assistance under part I of the Foreign Assistance Act of 1961 may be provided notwithstanding any provision of law that restricts assistance to foreign countries (other than section 490(e) of that Act) if, at least 15 days before obligating funds for such assistance, the President notifies the appropriate congressional committees in accordance with the procedures applicable to reprogramming notifications under section 634A of that Act.".

[373] Chapter 8 was added by sec. 109 of the FA Act of 1971. See other legislation on international narcotics control in *Legislation on Foreign Relations Through 1993*, vol. I-B.

AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

April 11, 1990

A.I.D. ANNOUNCES DEBT FOR DEVELOPMENT INITIATIVE

In response to the debt crisis facing many developing countries, the U.S. Agency for International Development (A.I.D.) is initiating a new Debt for Development mechanism to finance development assistance activities of non-governmental organizations. Through this new Initiative, A.I.D. will support certain programs of non-governmental organizations in developing countries through debt exchange transactions that will both reduce the host countries' debt burdens and obtain a favorable rate of exchange for foreign assistance funds provided to such organizations.

I. INTRODUCTION TO THE A.I.D. INITIATIVE

A. Summary

With the Debt for Development Initiative, A.I.D. will use foreign assistance funds to finance the purchase, by intermediary organizations, of debt currently owed by developing countries to foreign creditors. A.I.D. will finance the purchase of debt at the discount price at which such debt is currently bought and sold on the secondary market.

Instead of seeking to collect the full face value of debt acquired through the Debt for Development Initiative, however, A.I.D. will provide for the retirement of the debt in exchange for resources that the debtor country will provide for use in development activities. For example, debt acquired with A.I.D. funds could be retired in exchange for local currencies to be used in A.I.D.-financed health and nutrition programs in the debtor country. By converting foreign assistance dollars into local development resources (such as local currencies) through the debt exchange market, A.I.D. will be able to reduce the debt burden of developing countries while also obtaining local development resources at a favorable rate of exchange.

Resources received through Debt for Development transactions will be used for A.I.D.-financed projects of non-governmental organizations, such as private voluntary organizations (PVOs), cooperatives, and universities that are not instruments of the aid recipient country's government. These organizations will play a central role in the Debt for Development Initiative by serving as intermediaries between A.I.D. and the current owners ("holders") of developing country debt, as well as between A.I.D. and the debtor countries, for the purpose of acquiring and retiring debt. Intermediary organizations will then be responsible for managing the use of resources acquired through the debt exchange for development activities approved by A.I.D.

B. Background on the International Debt Market

Many developing countries face serious difficulties in repaying high volumes of debt owed to foreign governments and private commercial lenders. Payments of principal and interest on debt consume a large proportion of the foreign currencies earned by developing countries. Heavy debt burdens also limit opportunities for obtaining new credit, thus impeding development efforts.

In recent years a private commercial market has developed for the debt obligations of nations ("sovereign debt"), which can be bought or sold like other commercial property. Because of the increasing risk that many heavily indebted countries will be unable to repay either all or part of their debt, debtholders have become willing to sell the debt or an amount less than the debt's face value. Debtholders may wish to sell this debt, even at a "loss" resulting from the discount price, in order to capture the debt's current value and to reduce the volume of non-performing loans in their loan portfolios.

Parties wishing to invest, conduct other forms of business, or support development activities in developing countries may find it attractive to purchase the debt of developing countries at current discount prices. After buying the debt, the new debtholders exchange or swap the debt for assets (such as local currencies or equity shares in local enterprises) provided by the debtor country. The value of the assets received in this exchange may be less than the debt's face value but greater than the debt's purchase price. Thus the buyer ultimately gains a more valuable asset in the debtor country through the mechanism of the debt exchange than through direct acquisition with dollars or use of conventional currency exchange markets.

Developing countries also benefit from debt exchange transactions, because these countries retire a certain amount of foreign debt while gaining new participants in their economies (for example, new investors in private enterprises). Debtor nations generally cannot take advantage of the discount sale price of their debt by purchasing their own loans directly, because the terms of most loan agreements bar such purchase. Therefore, most debt exchange transactions require purchase of the loan asset by a third party serving as intermediary between the lender and the borrowing country.

C. Participation by A.I.D. in the Debt Exchange Market

The new international debt market presents A.I.D. with an opportunity to achieve several objectives, consistent with the purposes of the U.S. foreign assistance program. Through the new Debt for Development Initiative, A.I.D. will participate in this market by using foreign assistance funds to finance the purchase of loans owed by developing countries to foreign creditors. Instead of collecting such loans, A.I.D. will provide for their retirement in exchange for local assets needed for foreign assistance activities of non-governmental organizations in debtor countries.

A.I.D. will finance all debt exchange transactions through intermediary organizations, such as private voluntary agencies and cooperatives. A.I.D. will issue grants to intermediary organizations to purchase debt. Intermediaries will subsequently convert this debt into local assets, which the intermediaries will use for either newly initiated or ongoing development projects approved by A.I.D. Participation by intermediaries in Debt for Development will strengthen the development programs of these organizations while simultaneously advancing the other stated objectives of the Debt for Development Initiative. *

A.I.D. will finance debt exchange transactions yielding various types of host country assets needed for development activities. For example, debt could be exchanged directly for local currencies needed to finance development activities, such as education and health programs, in the debtor country. Intermediaries could also exchange A.I.D.-financed debt for host country programs, such as commitments to conserve natural resources or protect endangered species ("debt for nature"), in a manner similar to the recent debt exchange agreement between the Government of Bolivia and a private organization (Conservation International) to protect tropical rain forest in Bolivia. A wide range of A.I.D.-financed programs of non-governmental organizations will be eligible for financing with resources obtained through the Debt for Development Initiative.

Each activity of a non-governmental organization financed through a Debt for Development transaction must be approved by A.I.D. in accordance with standard Agency rules and procedures applicable to funding of non-governmental organization activities. Both new and ongoing activities of non-governmental organizations will be eligible for financing, either in whole or in part, through A.I.D. Debt for Development transactions.

D. <u>Illustrative Transaction</u>

Each Debt for Development transaction will be accomplished through a series of agreements and transactions involving the debtor country, the debtholder, A.I.D., and an intermediary organization. The A.I.D. Debt for Development Guidelines, which follow in Part II, will govern these transactions. The following hypothetical transaction shows in abbreviated form the steps needed to complete a typical Debt for Development exchange.

<u>Example</u>: A private voluntary organization dedicated to preservation of endangered species (in this hypothetical example, the organization will be called "Preservation International") has received a commitment by A.I.D., or is preparing to submit a proposal to A.I.D., to fund a project to preserve a species of wildfowl in the Philippines. This project will require a sum of local currencies to finance a wildfowl protection plan, as well as a commitment by the Government of the Philippines to set aside a significant acreage of public land as a wildfowl refuge.

Preservation International determines that the Government of the Philippines owes a substantial quantity of debt to foreign creditors (such as banks), and that certain creditors are selling their Philippine Government debt at a substantial discount. Preservation International contacts A.I.D./Washington or the A.I.D. Mission in Manila to determine whether the acquisition of Philippine Government debt as part of a debt exchange to finance a wildfowl preservation project in the Philippines would be consistent with U.S. and multilateral economic policy and A.I.D. project priorities in the Philippines.

If A.I.D. responds favorably to Preservation International's enquiry, representatives of the organization (perhaps in collaboration with USAID Mission personnel) initiate a discussion with representatives of the Government of the Philippines, most likely including representatives of the Central Bank. These discussions explore the interest of the Philippine Government in supporting a wildfowl preservation project financed through the proceeds of a Debt for Development transaction financed by A.I.D. Preservation International reaches an agreement in principle with the Government on the basic terms of a Debt for Development agreement establishing the terms, mechanism, and schedule for retirement of Philippine Government debt in exchange for local currency and Government commitments to establish a wildfowl refuge. Preservation International also confirms the availability of Philippine debt for sale on the secondary commercial market and the current price of such debt.

Preservation International then prepares a proposal for A.I.D. describing, among other things, the wildlife preservation objective of the project, the anticipated role of Philippine debt in financing the project, the availability of such debt for purchase, the proposed use of a broker or other means to acquire and process the debt certificates, the willingness of the Government of the Philippines to provide local currency and wildfowl refuge commitments in exchange for retirement of debt, and a plan for use of local currency to meet project objectives.

If A.I.D. agrees to finance the project, it enters into an agreement with Preservation International setting forth the basic terms and procedures of the Debt for Development transaction, as well as other issues normally addressed in a project agreement. With the financing for the transaction assured, Preservation International enters into a formal agreement with the Government of the Philippines setting the terms for the eventual debt exchange.

Preservation International then negotiates a favorable discount price for purchase of a volume of Philippine Government debt from a willing commercial seller. Consistent with the Debt for Development agreement between A.I.D. and Preservation International, A.I.D. provides grant funds to finance the purchase of this debt. Preservation International takes title to the debt but promptly retires it in exchange for the local currency and commitments promised by the Government of the Philippines in the Government's separate agreement with Preservation International.

Preservation International subsequently utilizes the local currency, which the Government provided in exchange for the debt retirement, for wildfowl preservation purposes. It monitors the Philippine Government's compliance with its commitment to set aside a wildfowl refuge, as provided in the debt retirement agreement, and it administers the project in a manner otherwise consistent with standard rules governing A.I.D.-financed projects.

II. A.I.D. DEBT FOR DEVELOPMENT GUIDELINES

A.I.D. has prepared the following Debt for Development Guidelines to govern administration of the Agency's Debt for Development Initiative. These Guidelines describe the role of intermediary organizations in the Initiative, the types of A.I.D. grants that will be available, and the various administrative and contractual procedures required in order to effect a Debt for Development transaction. A.I.D. expects to modify these Guidelines as it gains experience with the Debt for Development Initiative.

A. Introduction

1. Scope and Applicability: The following Debt for Development Guidelines govern the programming of funds made available to the Agency for International Development (A.I.D.) under the Economic Support Fund (ESF) and Development Assistance (DA) accounts (including the Development Fund for Africa), to the extent such funds are used to finance the purchase of debt owed by developing countries to parties other than the United States Government. All such debt acquired with A.I.D. financing will be exchanged for local currencies or other assets (such as local currencies or host country development efforts) needed to achieve one or more objectives of the ESF or DA program.

Organizations receiving foreign assistance funds from A.I.D. may not use such funds to acquire debt owed by developing countries, or engage in other transactions involving such debt, without prior approval of A.I.D. All debt acquisitions financed directly or indirectly by A.I.D. shall be undertaken in accordance with these Debt for Development Guidelines.

2. Purpose of Guidelines: These Guidelines are designed to ensure that A.I.D.-financed Debt for Development programs achieve the objectives stated in these Guidelines and operate in a manner consistent with United States laws governing the use of appropriated funds.

3. Issuing Party and Authority: A.I.D. issues these guidelines under the authority provided in the Foreign Assistance Act of 1961, as amended.

4. Modifications to Guidelines: Modifications to these Guidelines may be needed as A.I.D. gains experience with its Debt for Development program. Parties cooperating with A.I.D. in the implementation of this Initiative are encouraged to identify problems that arise in applying these Guidelines and to suggest any needed changes.

B. Objective

The objective of the A.I.D. Debt for Development Initiative is to finance foreign assistance activities of non-governmental organizations (such as voluntary agencies and cooperatives) through debt transactions that will:

-- (1) assist in reducing the foreign debt burdens of developing countries that receive U.S. foreign assistance, consistent with the general economic development purposes of the U.S. foreign assistance program; and

-- (2) obtain a favorable rate of exchange for U.S.

foreign assistance dollars that are converted into local currencies or exchanged for other assets needed for foreign assistance programs.

C. General Statement of Policy

To achieve the objectives stated above and consistent with A.I.D. rules and regulations (including the present Guidelines), A.I.D. invites non-governmental organizations (referred to in these Guidelines as Debt for Development "intermediary organizations" or "intermediaries"), such as private voluntary organizations (PVOs), cooperatives, and universities which are not instruments of the aid-recipient country's government, to develop proposals for grants and cooperative agreements with A.I.D. to implement the A.I.D. Debt for Development Initiative.

A.I.D. will review proposals by intermediary organizations to use foreign assistance funds to finance the purchase, by the intermediary organization, of debt owed by developing countries to parties other than the United States Government. Such proposals must provide for prompt retirement of such debt through an exchange of the debt for local currencies or other assets furnished by the debtor country to the intermediary for development activities. A.I.D. will receive Debt for Development proposals from intermediary organizations in a wide range of program areas, such as environmental protection, population planning and health, and microenterprise development for both new and ongoing project activities.

A.I.D. will issue a limited number of awards to assist intermediary organizations to develop proposals for Debt for Development transactions that will achieve foreign assistance purposes. Once a Debt for Development transaction has been approved, A.I.D. will closely monitor the intermediary's use of A.I.D. funds to acquire debt and, in appropriate circumstances, will provide technical advice (usually through consultants) to assist intermediaries in purchasing and exchanging debt.

D. Debt for Development Procedures

1. Role of Intermediary Organizations: A.I.D. will not directly acquire debt of a developing country for use in a Debt for Development exchange. Instead, A.I.D. will provide foreign assistance grant funds to finance the acquisition of such debt by intermediary organizations. In consultation with A.I.D. Missions, intermediaries will negotiate with the debtor country the terms of the subsequent debt retirement. Intermediaries will also arrange for the purchase of debt and will assume primary responsibility for managing the use of assets generated by the

debt retirement. Intermediary organizations, therefore, will play a central and critical role in the A.I.D. Debt for Development Initiative.

2. Types of A.I.D. Awards: To assist the participation of intermediary organizations in Debt for Development transactions, A.I.D. intends to make foreign assistance funds available to support both (a) the preparation of Debt for Development proposals by intermediaries, and (b) the acquisition and retirement of the debt itself once an intermediary's proposal for a Debt for Development program has been approved by A.I.D. A.I.D. expects to allocate a larger share of foreign assistance resources to acquire the debt than to assist preparation of Debt for Development proposals.

a. Awards to support preparation of proposals: As described more fully in Part II(D)(5) of these Guidelines, A.I.D. will agree to finance debt transactions only after an intermediary organization and a debtor country have reached an agreement in principle on the purpose and terms of the eventual debt exchange, and after the intermediary has investigated the availability and price of a particular country's debt on the international commercial market. Extensive negotiations between the intermediary and debtor nation, as well as various studies and consultations regarding the availability of a country's debt for purchase, may be needed to meet these preconditions.

A.I.D. will expect most non-governmental organizations to furnish the staff and resources needed to meet the above preconditions. However, A.I.D. will issue a limited number of awards to assist intermediary organizations in preparing Debt for Development proposals and in negotiating the terms of the debt exchange with the debtor nation. Such awards will be made only to those intermediary organizations that can demonstrate a capacity to undertake successfully the complex tasks of a debt exchange transaction, as well as to administer the development activity to be financed by the transaction.

Applications for financing to support pre-award Debt for Development activities should address the following issues: (1) the nature of the development activity or ongoing project to be financed with assets acquired through the Debt for Development transaction; (2) the information needed and steps proposed to be undertaken to develop a final proposal and to reach agreement with the debtor country on the use of assets generated through the debt transaction; (3) the opportunities for purchase and the current market price (to the extent such information is readily available) of the country debt to be acquired with A.I.D. financing; (4) the anticipated advantages of acquiring local development assets by means of debt exchange rather than through direct purchase with dollars; and (5) the projected allocation of costs and expenditure of time needed to develop a final proposal.

b. Awards to finance Debt for Development transactions: A.I.D. will also make resources available to finance Debt for Development transactions by intermediaries. The following provisions of these Guidelines set prerequisites for the award of funds by A.I.D. to finance Debt for Development transactions and establish procedures for effecting such transactions once an intermediary's proposal for a debt exchange has been approved.

3. Foreign Assistance Purpose of Each Debt Transaction: All Debt for Development transactions will advance the fundamental foreign assistance purpose of reducing a country's foreign debt burdens (see "Objectives" specified in Part II(B)). For A.I.D. to approve a Debt for Development proposal, however, the assets acquired through a Debt for Development transaction must be used for a specific development assistance activity of a non-governmental organization. The purpose of this activity must be consistent with the objectives of the particular category of assistance from which A.I.D. makes the Debt for Development award, and it must be clearly defined in advance of the issuance of that award.

For example, Development Assistance funds made available from the Agriculture, Rural Development, and Nutrition (Foreign Assistance Act ("FAA") Section 103) account will be used only to acquire debt that is to be converted into assets needed to advance Section 103 purposes. Development Assistance funds made available from the Population and Health (FAA Section 104) account will be used only to acquire debt that is to be converted into assets needed to advance population planning and health activities. Similarly, resources from the Development Fund for Africa will be used only to acquire debt to be converted into assets needed to advance development programs in sub-Saharan Africa. Economic Support Funds, to the extent available for Debt for Development transactions, may be used more broadly to advance ESF objectives of economic or political stability. In reviewing an application for a Debt for Development transaction, A.I.D. will consider whether the ultimate use of the asset generated through the transaction is defined with sufficient specificity and is within the purposes of an available funding source.

4. Purchase of Debt at Lowest Possible Prices from Established and Reputable Sellers: Requirement of A.I.D. Approval: A.I.D. financing may only be used to purchase debt from established and reputable debtholders, such as major commercial banks. A.I.D. will expect each intermediary to use A.I.D. financing to acquire debt from such sellers at the lowest

possible price, reflecting the full discount value of such debt in private commercial markets. No intermediary may use A.I.D. financing to acquire debt without A.I.D.'s express prior approval of the proposed transaction and sale price.

5. Pre-Agreement on Purpose and Terms of Debt Purchase and Retirement: Debt for Development transactions will be used to finance intermediary organization projects approved according to the usual A.I.D. standards and rules governing projects.

In addition to standard requirements, however, before A.I.D. agrees to finance a Debt for Development transaction, the intermediary must demonstrate to the satisfaction of A.I.D. that the intermediary has: (a) identified the asset to be obtained and the program activity to be financed through the debt transaction; (b) reached at least an agreement in principle with the debtor country regarding the terms, mechanism, and schedule for conversion of the debt into the identified host country asset; and (c) developed a budget and plan for use of the host country asset to achieve project purposes. An intermediary's mere expression of intent to use assets generated from a debt exchange for a general foreign assistance purpose will not be sufficiently definite to enable A.I.D. to make a financing award; before issuing an award, A.I.D. will require careful program planning and evidence of the debtor country's prior concurrence (for example, in the form of a signed agreement or a letter from the country's central bank or ministry of finance) on significant aspects of the eventual debt exchange.

A.I.D. will also require the intermediary to demonstrate that it has: (a) investigated the availability of the host country's debt for sale, (b) identified a reputable and willing seller of such debt (as discussed in Part II(D)(4) above), (c) determined the likely market price of the debt, (d) calculated the likely transaction costs to be incurred in acquiring and exchanging such debt, and (e) analyzed the financial and other advantages of acquiring the local development assets through the mechanism of a debt exchange rather than by direct purchase with dollars. To develop a Debt for Development proposal that addresses each of the above points and that is sufficiently specific and definite, an intermediary may, if needed, request pre-agreement funding from A.I.D. (as described in Part II(D)(2)(a) above). A.I.D., however, expects to make available only a limited amount of funding for this purpose.

6. Various Agreements Required: To effect the various transactions involved in a Debt for Development plan, separate agreements among parties will be required, in the following sequence: (a) between A.I.D. and the intermediary approving the terms and conditions of the foreign assistance

financing; (b) between the intermediary and the debtor country establishing the purpose and terms (as described in Part II(D)(5) above) of the planned debt exchange; and (c) between the intermediary and the debt holder effecting the initial sale of debt.

In exceptional cases it may be most efficient to combine the first two of these agreements into a single multi-party agreement among A.I.D., the intermediary and debtor country. A.I.D. will not be a party to the agreement between the seller of the debt and the intermediary organization. As discussed in Part II(D)(4) above, however, A.I.D. will require the intermediary to receive A.I.D.'s express approval of the proposed transaction and sale price before the intermediary expends A.I.D. funds to acquire debt.

7. Technical Assistance and Fees Incurred in Purchasing Debt: To assist intermediaries to purchase debt in the new international debt market, A.I.D. may make available to such intermediaries the services of financial consultants. A.I.D. funds may also be used to pay reasonable fees and transaction costs incurred by an intermediary in the purchase and exchange of debt, if such use of A.I.D financing is included in the Debt for Development agreement between A.I.D. and the intermediary.

8. Prompt Conversion of Debt into Development Asset: A.I.D. expects intermediaries to convert A.I.D.-financed debt into local currency or other development asset (as provided in the various Debt for Development agreements among the intermediary, debtor country and A.I.D.) as promptly as possible after the intermediary acquires the debt. Intermediaries may not: (a) retain title to such debt for speculative or other purposes, or (b) exchange the debt of one country for the debt of another country without prior approval of A.I.D.

9. Use of Development Asset by Intermediary: The intermediary shall promptly report to A.I.D. the nature and amount of the development asset acquired through an A.I.D.-financed Debt for Development transaction. On a quarterly basis the intermediary shall also report to A.I.D. on the use of the asset for the agreed upon development purpose, and it shall comply with any further reporting requirements included in project agreements with A.I.D. The intermediary shall promptly transfer to A.I.D. any asset that for any reason the intermediary has become unable to use in a manner consistent with its Debt for Development agreement with A.I.D.

10. Interest Earned on Local Currencies Obtained from the Debt Exchange: Subject to agreement by A.I.D. and any special rules to be issued by A.I.D., the intermediary may earn

and retain interest or other forms of income on the principal amount of local currencies obtained by the intermediary through debt exchange transactions, and the intermediary may use such principal and income either directly for approved program purposes or to establish an endowment for long-term financing of such program purposes. During the life of the project, the intermediary shall make quarterly reports to A.I.D. of the amount of such local currencies earned, retained or used for project purposes.

11. Installment Payments in Exchange for Debt Retirement: The agreement between a Debt for Development intermediary and the debtor country may provide for the debtor country, in exchange for retirement of the A.I.D.-financed debt, to furnish the development asset (such as local currencies) to the intermediary in installments rather than in a single lump-sum.

Installment payment amounts may take into account variations in the rate of exchange of units of local currency for dollars occurring during the payment term. For example, in exchange for retirement of the debt, the intermediary could receive a dollar-denominated note providing for installment obligations equal in value to a fixed sum of dollars, with installment payments to be made in local currencies in an amount calculated according to the exchange rate from dollars to local currencies applicable at the time of each payment.

In reviewing a proposal for such installment payments in exchange for debt retirement, A.I.D. and the intermediary should consider the risk of non-payment by the debtor country and whether insurance or other guarantees against non-payment should be provided to reduce the risk of loss.

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POLICY DETERMINATION
Agency for International Development

PD-21 **JULY 18, 1994**

GUIDELINES: ENDOWMENTS FINANCED WITH APPROPRIATED FUNDS

PN-AAV-470

PD-21
July 18, 1994

USAID POLICY DETERMINATION

GUIDELINES: ENDOWMENTS FINANCED WITH APPROPRIATED FUNDS

I. INTRODUCTION

Recent legislative changes greatly expand USAID's ability to fund endowments. Endowments provide another mechanism for achieving USAID's development goals which complements our more traditional assistance forms. Unlike traditional mechanisms which focus on financing goods and services in furtherance of foreign assistance objectives, endowments allow us to support more directly an entity whose purpose is to further such objectives.

However, endowments also present a series of unique difficulties that must be thoroughly assessed before a mission or bureau makes a funding decision. These problems are often exacerbated because of a lack of familiarity with endowments in many developing countries, and because the legal and regulatory environment in such countries may not provide an adequate framework for the establishment and oversight of such funds. In many cases, design of an endowment may also be very labor intensive.

These guidelines are intended to assist missions and bureaus in their analysis and funding of endowments, and to ensure that relevant factors are adequately taken into account. Some of the main issues covered are: the objectives which can be achieved through the use of endowments; characteristics of organizations for which endowments are appropriate; financial management of both the investment fund and program income; application of legislative restrictions; mechanisms and appropriate degree of oversight; and termination of the endowment.

II. BACKGROUND

Prior to 1990, USAID's authority to grant funds for the establishment of endowments was severely restricted. Federal appropriations law generally prohibits a grantee from retaining interest earned on appropriated dollars. As a result, there was no practical means for establishing endowments with dollars appropriated to USAID, or with local currency acquired by the exchange of these dollars.

The only way that endowments could be established with USAID funds before 1990 was with explicit congressional approval. This mechanism was only occasionally used.

The other mechanism for establishing endowments in conjunction with USAID activities was to use host country owned local currency. Because these funds are not appropriated to USAID or owned by USAID, they are not subject to federal appropriations laws (or most other statutory restrictions on the use of USAID funds). Local currency endowments have become increasing common, particularly over the last decade, supporting programs in education, environmental resource management, and agricultural research.

Legislation enacted as part of the FY 1990 foreign assistance appropriations act took the first step forward in permitting the use of appropriated funds for funding endowments. Section 584 of that act permitted non-governmental organizations (NGOs) to retain interest on, and thus establish endowments with, local currency acquired through the exchange of appropriated dollars. The legislation was directed mainly at transactions involving debt swaps, whereby USAID provides a grant to an NGO to purchase discounted debt of a developing country, which is then redeemed by the host government with local currency funds. Section 584 made possible the retention of interest earned on the local currency funds acquired through debt swaps, and as a by-product, also made possible the establishment of endowments with these funds. The Section 584 authority was continued in fiscal years 1991 and 1992.

In FY 1993 Congress significantly expanded the authority, to permit non-governmental organizations which were contractors or grantees of USAID to retain interest on appropriated dollars retained as dollars as well as those converted into local currency, and to establish endowments with these funds. (Section 567 of the FY 1993 foreign assistance appropriations act.) The authority was extended to apply retroactively to prior year funds as well as FY 1993 funds. Congress reenacted this provision in the FY 1994 appropriations bill as Section 534. (Section 534 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994; P.L. 103-87.) With this authority, NGO's may now be permitted to establish endowments directly with funds granted to them by USAID, without first having to convert the funds to local currency.

III. SCOPE AND AUTHORITY

A. Purpose of guidelines. The funding of endowments involves a number of budgetary, policy, and legal issues not commonly encountered in more traditional forms of assistance. These guidelines are intended to highlight and provide guidance on these issues in order that endowments may be established in a manner consistent with sound programmatic, budgetary, and financial management practices, and the laws governing the use of appropriated funds.

B. Scope and applicability. These guidelines describe USAID's policies governing the use of grant funds for financing endowments; the organizations eligible to receive endowments; and the various administrative and contractual procedures required in order to establish, maintain, audit, draw down, evaluate and close an endowment. For the purposes of these guidelines, an endowment is considered to be the capitalization of a fund, independent from USAID, the objective of which is to generate income to maintain activities of a private, non-profit institution that are consistent with the purposes of the Agency's authorizing legislation.

The guidelines apply to all endowments funded with appropriated dollars, including those which have been converted to local currency through debt swaps or normal exchange procedures. The guidelines do not apply to the funding of endowments with host country-owned or NGO-owned local currency. However, many of the issues discussed herein are equally applicable to all endowments, and the guidelines may therefore be useful regardless of the funding source involved.

Endowments are just one of the circumstances in which interest may be retained under the new legislative authority. Separate guidance will be issued on the retention of interest outside the context of endowments.

C. <u>Modifications to guidelines.</u> Modifications to these guidelines may be needed as USAID gains experience with the endowment program. The Bureau for Policy and Program Coordination (PPC) encourages interested parties to identify problems and to suggest needed changes.

IV. DESIGN AND APPROVAL OF ENDOWMENTS

Because the authority to establish endowments is new, the Agency's experience in this area is somewhat limited. U.S. foundations can often be an invaluable source of expertise to assist us in developing activities that involve endowments.

To ensure that the experience being acquired is adequately shared throughout the Agency and its overseas missions, and that this guidance can be updated and refined to reflect innovations in the field, all endowments must be approved in USAID/W at this time. Regional Bureaus will be responsible for approving endowments according to their normal project approval processes. PPC and the Office of General Counsel (GC) should participate in all reviews. PPC will review this policy in two years to determine whether Washington approval continues to be necessary.

In most cases, funds for an endowment for an NGO will be obligated through a grant, and the approval process should therefore follow the procedures applicable to all such grants. However, endowments have a number of characteristics that differ from traditional NGO grant activities, and that raise significant policy issues which should be addressed. The issues set forth below should be specifically considered during the approval process and documented.

A. <u>Consistency with USAID strategy.</u> A proposal for an endowment must be consistent with the objectives and approved strategies for the country, region, or sector in which the funds are to be expended.

B. <u>Objectives.</u> An endowment should be directed at achieving objectives not attainable through traditional assistance modes. Some possible justifications for endowments are cited below. One or more should be included in the rationale for a proposed endowment, and the bureau or mission should assure itself that such objective(s) are achievable under the circumstances at hand.

1. An endowment may be used to broaden and enhance the funding base of an NGO engaged in activities which have a long-term horizon and where funding by short-term grants or a series of such grants is likely to be insufficient to realize the full program objectives.

2. The financial stability provided by an endowment may insulate the endowed organization from unpredictable government and donor agency budget fluctuations. An endowment may thus enable an NGO to become more independent and self-reliant in identifying and solving environmental, economic, and social development problems.

3. An endowment may allow the recipient organization to attract other funds by increasing donor confidence, thus leveraging the USAID funds.

4. USAID financing of an endowment may be used to encourage the establishment of philanthropic principles in countries where such principles are less well-established.

5. An endowment may allow an activity to be institutionalized and continue beyond USAID's funding, when it otherwise may not have been.

6. An endowment is one mechanism by which USAID may continue development strategies through international or indigenous organizations upon termination of an USAID presence in the country and/or the termination of USAID direct assistance activities.

C. <u>Budgetary impact.</u> In general, the establishment of an endowment entails a much more rapid up front outlay of funds than traditional program activities, and in some cases may involve a relatively large amount of funds. Although the budgetary impact can be lessened somewhat by capitalizing an endowment over more than one year, it is still greater than if funds were expended over a period of time for the activities themselves.

The bureau or mission granting the funds should determine whether an endowment is more cost effective than multi-year support of the organization through technical assistance and institutional and project support, and whether the benefits to be gained by establishing the endowment outweigh the benefits of the alternative uses of the program funds, which in many cases will have less adverse budgetary implications.

D. Characteristics of the NGO. The following characteristics must be demonstrated by an organization for which an endowment is proposed:

1. In accordance with the statutory provision authorizing endowments, the organization receiving the endowment must be non-governmental. The purpose behind requiring that the organization be "non-governmental" is to ensure that it is independent from the government. Some government involvement is acceptable, as long as the government does not control the organization. For example, the government may be represented on the board of directors of the organization, but only by a minority of the board members.

2. Under the usual circumstances, the organization will also be non-profit.

3. The organization's activities must fall within the purposes for which the USAID funds have been authorized, or the documentation establishing the endowment must limit the use of the USAID funds to such purposes.

4. If the organization is not a registered PVO, it must meet pre-award survey requirements designed to ensure adequate accountability of funds.

5. The organization must have a demonstrated capacity to implement the program which the endowment is to fund, or controls must be built in to ensure that this capacity is developed. In some cases, USAID may want to provide a separate grant to a well-established NGO to help with the institutional development of a beneficiary NGO that does not have a proven track record.

If the beneficiary organization requires a high degree of monitoring and oversight (e.g., it's new or weak), this may mean that an endowment is not an appropriate mechanism for providing assistance to it. In such cases, the mission or bureau should consider providing traditional grant funding for a number of years until the organization has established a track record, and then evaluate whether an endowment makes sense.

E. <u>Recipient financial participation.</u> USAID's current guidelines (PD-16) encourage the largest reasonable and possible financial participation of the recipient in financing a project, establishing a reference point of twenty-five percent of project costs. In some instances, however, especially for newly established NGO's, participation of less than twenty-five percent may still be substantial, given the NGO's resources. It is also possible that no financial participation may be appropriate if the NGO provides a critical and non-substitutable service in achieving bilateral assistance objectives. The USAID official authorizing an endowment will make the final determination of the appropriate level of financial participation.

F. <u>Financial management considerations.</u> Unlike the case of grant expenditures, the financial considerations of endowments must be addressed from two perspectives: the adequacy of controls related to the expenditure of funds by the NGO for program activities, and the adequacy of financial arrangements and controls related to the investment of the endowment fund itself. A number of different arrangements are possible in establishing an endowment, and often these arrangements are driven by these financial considerations. Issues relating to both categories of financial management, and suggestions for mechanisms for building in controls, are set forth below.

1. <u>Program expenditures.</u> Legally, the establishment of an endowment is analogous in many ways to a cash transfer. The purposes of the grant are accomplished at the time the endowment is established; therefore, statutory and regulatory restrictions on the use of funds, such as source/origin, do not apply. (However, USAID may apply some restrictions as a matter of policy. See Section V.C. below.) The converse of this is that USAID may not actively participate in the implementation of program activities.

(a) Bureaus and missions must therefore assure themselves that the beneficiary of the endowment can adequately implement its programs and manage and account for the funds it expends without detailed oversight by USAID.

(b) If the organization is not a registered PVO, a pre-award survey must be performed to ensure adequate accountability of funds.

(c) If the organization is found to have inadequate financial controls in place, or it is being newly created, controls must be built into the program design.

2. <u>The investment fund.</u> An endowment by its nature involves a relatively large amount of appropriated funds, largely outside of USAID's control, which will continue to exist for many years, often beyond the period of USAID oversight. If

the endowment is to succeed, the return generated by the endowment, together with other available resources, must be adequate to support the program of the beneficiary organization, and the possibilities for misuse must be minimized. The arrangements for management of the fund will vary with the size of the fund, the track record of the beneficiary NGO, and whether it is composed of dollars or local currency.

In order to assure that the financial controls over the investment fund are adequate, the following points should be addressed during the program design and approval process:

(a) Country of investment. Legally, there is no restriction on where the funds may be invested. However, because this is a new authority which will be subject to close scrutiny, we are requiring that the funds be invested in financial instruments offered in the U.S. through a U.S.-based financial intermediary. This still allows investments in global offerings. For example, funds may be invested in a mutual fund that includes emerging market or European securities, as long as the mutual fund is offered in the U.S. through a U.S. broker. Investment options in the U.S. markets are sufficiently broad that this requirement should not hamper development of a sound investment strategy for the endowed organization. In fact, even absent this restriction, one could expect that the bulk of funds of an endowed organization looking for long-term stability would be invested in the U.S.

A small amount of funds needed for current local operating expenses will necessarily be held locally, probably in an interest bearing account.

Endowments derived from debt swaps are not subject to this requirement that all long-term investments be in the U.S. These are local currency funds by their nature and thus may be invested locally.

(b) Conflicts of interest. An important concern in the establishment of endowments is conflict of interest. The members of the board of directors, a trustee, or financial manager all may have potential conflicts with respect to either investment or expenditure of the funds. When the funds we grant are required to be invested in the U.S., the problem is substantially diminished (with respect to those funds), but not eliminated. When funds are derived from debt swaps, however, and invested locally, the problem is much greater. The issue of conflict of interest requires careful treatment at the design stage. More detailed guidance on conflict of interest, and sample clauses, are available from PPC, GC, and RLA's.

(c) Management of the funds. Arriving at a mechanism for managing the investment fund entails a fairly complex balancing of USAID's interests, the NGO's interests, and cost.

(i) One option is to establish a trust arrangement whereby control of the investment fund is totally separated from the beneficiary organization. The trustee may be a separate foundation or NGO, a bank, etc. If it seems advantageous under the circumstances, the trustee organization may be specially created in order to manage the endowment.

There are a number of advantages to using a trustee to manage the investment fund:

-- A local NGO that is a beneficiary may appropriately have a board of directors composed entirely, or predominantly, of nationals of that country. With such a board, potential conflicts of interest in investing the funds could be a serious problem, particularly if the funds are local currency derived from a debt swap. It may be prudent and desirable to have international participation in the management of the fund. Separating control of the investments from control of the program activities allows for an infusion of outside influence over the investment function.

-- The board of the beneficiary organization may be composed of people whose characteristics and skills are appropriate for management of the program, but who do not have the background and experience to manage the investment of the endowment fund. Again, having an independent entity manage the fund allows for the selection of those most suited to each task.

-- Separation of the fund from the beneficiary may alleviate the possibility that short-term programmatic pressures could lead to imprudent investments.

-- Finally, if the trustee is either of U.S. nationality or located in the U.S. and serious problems develop in the future, it will usually be easier for USAID to reach the funds. Additionally, the trustee would be regulated by U.S. laws in this case, adding a degree of protection.

The actual degree of independence of the two organizations should be closely examined. For example, is there any overlap on the board of directors? If the trustee is a bank, is it affiliated with any of the board members of the beneficiary organization?

If a trust arrangement is used, in most cases USAID will grant the funds to the beneficiary NGO, and the beneficiary will execute a trust arrangement with the trustee. However, USAID should require that it approve the trust agreement prior to the signing of the grant or the disbursement of funds. Both the trust agreement and the grant agreement should also specify that the trust agreement may not be amended without USAID approval during the period of USAID oversight. Again, the trust agreement should specify the general parameters of investments allowed and the return expected. USAID will disburse funds directly into the trust account.

If both the trustee and the beneficiary are NGO's, USAID may want to grant the funds directly to the trustee, to be held in trust for the beneficiary. However, we would need to ensure that the appropriate HB13 provisions were passed on by the trustee to the beneficiary.

The disadvantages to using a trust arrangement are:

-- If a suitable trustee does not already exist, creating a new organization could be difficult, time consuming, and expensive.

-- Existing, easily accessible trustees, such as banks, may tend to be extremely conservative in their investment strategies, and not ensure the best return on the funds.

-- Use of a trust arrangement could restrict the NGO's ability to build a capacity for management of long-term assets. A limited track record in this area could frustrate the NGO's efforts to use the USAID funding to leverage contributions from other sources.

(ii) An intermediate arrangement that is common among U.S. organizations is for the beneficiary organization to form a separate finance committee for management of the fund. The committee takes its general direction from the board of directors of the organization, but includes outside members with financial expertise. If such an arrangement is contemplated, it should be specified in the grant agreement. The number and qualifications of the outside members may also be specified, and USAID should ensure that a satisfactory committee has been formed prior to the disbursement of funds.

(iii) In most cases, at a minimum, a professional financial manager should be retained. In that case, the NGO retains ultimate control of the funds, but enters into a written agreement with a manager for day-to-day investment and accounting services. The contract should specify the general parameters of the types of investments to be permitted, and the amount and timing of income to be disbursed to the organization for its operations. The requirement for such a contract should be included in the grant agreement and the mission should review and approve the contract either prior to the signing of the grant, or prior to the disbursement of funds into the endowment. The grant agreement should also specify that any amendments to the financial management agreement must be approved by USAID during the period of USAID oversight.

(d) Separate account. If the NGO has funds from other sources, the funds contributed by USAID to the endowment, and the return on those funds, should be held in a separate account to facilitate monitoring. In most cases, this should not interfere with having multi-donor contributions to an endowment fund. In fact, many organizations prefer this arrangement, since it provides some incentive to subsequent contributors to add funds that are also identifiably their own, and to which they may also want to attach conditions. However, if a mission or bureau believes that a separate account is not feasible under a particular set of circumstances, they may request an exception to this requirement from PPC.

(e) Types of investments. Although the statutory provision authorizing the retention of interest and establishment of endowments states that the funds may be placed in "interest bearing accounts", we have not interpreted this provision to restrict investments of these funds to savings accounts or similar instruments. Rather, we read this language merely as part of the positive authority Congress was providing to overcome normal prohibitions on retaining "interest" on appropriated funds. As a matter of policy, the investments should be sound and prudent and not include any of a highly speculative nature. The specific investments which will be most beneficial will vary according to the particular circumstances, and may include equity investments.

(f) Life of the endowment. It may not be necessary or desirable in all cases to create an endowment with USAID funds large enough to finance activities in perpetuity, and to permit the use of the investment income only. In some cases, it may be preferable to draw down on the principal to some degree, as well. For example, USAID may finance an organization with the understanding that it will be seeking additional funding from other sources. If the funding materializes as projected, one option may then be to preserve the endowment principal granted by USAID. An alternative approach may be to spend down the USAID funds and retain the new funding as the source of on-going income. If the additional funding does not materialize as planned, it may be preferable for the organization to begin drawing down principal in order to operate at a reasonable level of activity, rather than operate at a level that would have limited impact, even if this means that it may cease to operate altogether in a number of years.

In other cases, USAID may believe that the useful life of the organization is limited, and therefore preservation of the endowment principal is neither necessary nor desirable. Finally, budgetary constraints may limit the size of the endowment and necessitate drawdowns. A word of caution, however: if the funds are drawn down too rapidly, the endowment could appear to be nothing more than an advance of funds, and the failure to apply normal funding controls and restrictions could be called into question. The minimum period over which we would expect the USAID funds to be drawn down is 10-15 years.

(g) Financial plans. In all cases, the financial plans, including the projections for returns and the circumstances under which drawdowns of principal are to be permitted, should be reviewed by USAID prior to the approval of funding for the endowment.

(h) Tax consequences. The creation or funding of endowments may trigger a number of tax consequences -- in the U.S. (both federal and state) as well as in the host country. Of course, the beneficiary NGO has ultimate responsibility for assessing its tax liabilities. Nevertheless, tax issues should be thoroughly explored prior to the approval of an endowment, since they affect financial projections. A separate information package on U.S. tax issues has been prepared for internal guidance and is available from GC or PPC. Two of the most salient points, exempt status and deductibility of contributions, are briefly discussed below.

Income from investments in the U.S. will generally be subject to federal taxes and taxed at the corporate rate unless the NGO has been recognized as a charitable organization under Section 501(c)(3) of the U.S. Internal Revenue Code. (A separate exemption, unrelated to 501(c)(3) status, is applicable to interest income from U.S. bank accounts.) Foreign organizations can acquire exempt status by filing Form 1023. The IRS generally takes a minimum of three months to process the application. In its review, the IRS emphasizes financial management controls and accountability measures, so a thorough analysis of many of the issues identified in this guidance will help to assure 501(c)(3) status for the organization.

In general, contributions by a U.S. citizen to a foreign organization are not tax deductible, nor are contributions to a U.S. organization that is acting as a mere conduit for funds for a foreign organization. There are circumstances under which a U.S. organization can channel funds to a foreign organization without jeopardizing the deductibility of the funds, but the rules are fairly complex and need to be followed closely.

G. Legal-regulatory environment. In many developing countries, endowments are not a familiar funding arrangement. The host country laws and regulations may not be appropriate, therefore, for establishing endowments, at least in some forms. To overcome gaps in the law, the charter or by-laws of the organizations may have to include items not normally found in these documents. Local legal counsel should be consulted early in the process. Missions should recognize, however, that if endowments are not common in a country, even finding local counsel who can provide reliable advice could be problematic. The mission may need to contract outside consultants in order to gain a full understanding of the local legal and tax issues involved.

V. OBLIGATION OF FUNDS

A. Grant agreement. As stated above, obligation of funds will normally be through a grant agreement. Although there are substantial differences between our normal grant-funded activities and endowments, we are still granting the funds to the beneficiary organization, and imposing certain restrictions on the use of the funds, all of which must be incorporated into the grant agreement, either directly or by reference. Nevertheless, even though the grant agreement is the basic obligation document, it must be modified substantially in a manner similar to the modifications we make to government-to-government grant agreements for cash transfers. A model agreement will be developed in the near future.

B. Use of funds. The grant agreement should state any restrictions on the use of funds, particularly if the organization is not to be permitted to use the funds for all of the purposes for which it has been organized, or which are permitted under its charter.

C. <u>Restrictions on funds.</u> A normal grant agreement contains a panoply of restrictions on the use of the funds, most of which are statutorily imposed. Since endowments are created in order to provide the organization with a stable source of income, the primary purpose for which the funds are to be used is accomplished at the time the endowment is funded, although we may retain a subsidiary interest in how the funds are later used, as well. An endowment is therefore similar to a cash transfer, and normal statutory restrictions do not apply as a matter of law. However, we have determined that the following restrictions should be applied as a matter of policy:

1. Source/origin. Because USAID oversight of endowments will be somewhat limited; the organizations receiving endowments will often have other funding sources for their operations, separation of which from USAID funding could be extremely burdensome; and in most cases the income from the USAID funds will be spent rather than those funds themselves, USAID will not impose any flat source/origin requirements. However, beneficiary organizations should be encouraged to make a good faith effort to follow the general parameters of our source/origin rules, recognizing that the source of the funds is the U.S. Government. The grant agreement should contain a clause to this effect. Compliance with this good faith effort will not be monitored. Missions should be aware that source/origin is always a sensitive issue, and failure of the organization to make such a good faith effort could possibly jeopardize continuation of our endowment authority.

2. Family planning activities. None of the funds made available through an endowment, including investment income, may be used --

(1) to coerce any person to practice abortion; or

(2) to pay for the performance of involuntary sterilizations or to coerce or provide any financial incentive to any person to undergo sterilization.

D. <u>Conditions precedent.</u> The grant agreement should state that, prior to the disbursement of funds, the following must be reviewed and approved by the mission:

1. the financial plan, which includes a realistic projection of income from the endowment; and

2. the arrangements for management of the endowment fund, which should include an executed trust agreement or financial

management contract if they are to be used, or formation of a finance committee.

E. Covenants. The grant agreement should include the following covenants:

1. a covenant that the trust agreement, finance committee, or financial management contract cannot be changed during the period of USAID oversight without the approval of USAID; and

2. a covenant requiring that if either the NGO or the endowment are dissolved at any time (even after the period of USAID oversight), any funds remaining in the endowment must be returned to the U.S. Treasury as miscellaneous receipts, unless USAID agrees otherwise.

F. Monitoring by USAID. The grant agreement should establish the period of USAID oversight, and the level of monitoring that will be performed during that period. In general, the endowment and use of funds should be monitored for a minimum of five years and a maximum of ten. Further details on monitoring are included below.

G. Termination. The grant agreement should include the normal rights to terminate at USAID's option if funds are improperly used, to apply during the period of USAID oversight. Additionally, the grant agreement should specify that failure to provide a scheduled audit report to USAID, or serious adverse audit findings, will constitute default under the agreement and can be considered grounds for termination. The grant agreement should also provide that if the grant is terminated, any funds remaining in the endowment must be refunded to USAID.

VI. MONITORING AND OVERSIGHT

A. Monitoring by USAID. The degree of monitoring by USAID that is desirable and feasible will be influenced to some degree by the specific circumstances surrounding the endowment. If the organization has a good track record, and we are funding the endowment as part of a decision to terminate direct USAID activities in the country, limited oversight by USAID might be all that is needed or even feasible. On the other hand, if the organization is new and we are maintaining a presence in the country, more oversight for a longer period of time might be appropriate.

In any case, the oversight that is permitted will be limited to some degree by the nature of the transaction. In arriving at the legal determination that normal statutory restrictions need not be applied to the funding of an endowment, we are relying on the rationale that the purpose of the assistance is achieved at the time the endowment is funded. If USAID maintains too high a level of involvement in the subsequent project activities, this logic will be undermined, and it could be concluded that a normal grant agreement was the more appropriate assistance vehicle. No clear line can be drawn between what is the right level of involvement and oversight and what is too much. However, the following examples can be used as a guide:

1. The participation of a USAID employee on the board of directors of the organization or the trust (if the trustee also has some substantive oversight role in addition to having responsibility for the funds) is permissible only if it is in an ex-officio (i.e., officially representing USAID) non-voting capacity.

2. Requiring that USAID approve the first board of directors is permissible, but approving replacements after that is not. (The by-laws should build in a replacement mechanism which gives USAID confidence that the replacements will be acceptable without USAID oversight.)

3. Retaining the right to approve subgrants made by the NGO is not permissible.

4. Requiring submission of the NGO's annual report, or an annual report specifically prepared for USAID, is permissible and usually desirable.

B. Monitoring after the Period of USAID Oversight. Missions and bureaus financing endowments also need to assure themselves that adequate arrangements are in place to ensure monitoring of the endowment by others (e.g., through publication of annual reports and audits and distribution to the broad NGO community) after the period of USAID oversight ends. Appropriate provisions should be included in the grant agreement and/or trust agreement. This issue should be explicitly addressed during project design and approval.

C. Audits. An annual audit during the period of USAID oversight, following the normal A-133 audit procedures, is required in all cases. The report should cover both the status of the principal and the earnings. The grant agreement should specify that failure to provide a scheduled audit report to USAID, or serious adverse audit findings, will constitute default under the agreement and be considered grounds for termination of the agreement and refund of the funds remaining in the endowment. Additionally, the endowment should be included in the mission's audit universe, in accordance with Audit Management Resolution Program, in order to ensure that it is tracked and monitored, even though there will not be any disbursements from USAID during most of the oversight years.

VII. MULTI-DONOR ENDOWMENTS

Endowments involving more than one donor may require some deviations from the above guidance. In such cases, specific additional guidance should be sought from PPC and GC.

VIII. CONSULTATIONS

Endowments can involve very complex structures and agreements, and may be affected by both local and U.S. laws and tax regulations. If the amounts involved are large, the potential for abuse or misuse of funds increases, particularly since many of the normal USAID controls cannot be applied. Additionally, the staff resources needed to establish an endowment may be greater than anticipated. Although USAID has gained a considerable amount of experience with local currency endowments, we do not have extensive experience creating endowments with appropriated dollars. Furthermore, dollar endowments are likely to be subject to a higher level of scrutiny by Congress and other outside organizations than that which is given to local currency endowments. It is therefore advisable for a mission or bureau that is contemplating funding an endowment to seek appropriate advice from local and U.S. legal counsel, as well as PPC and GC, as the first step in the process.

6/6/94

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POLICY DETERMINATION

Agency for International Development

PD-18

July 30, 1991

Local Currency

PN-AAV-467

101

AGENCY FOR INTERNATIONAL DEVELOPMENT

320 TWENTY FIRST STREET, N.W.
WASHINGTON, D.C. 20523

PD-18
July 30, 1991

A.I.D.

POLICY DETERMINATION

The Administrator

Local Currency

1.0 Summary

1.1 Important modifications in the Agency's policy governing the generation, programming, and accountability requirements associated with host country-owned local currency are described in this policy determination, which was transmitted as State 202944 (June 20, 1991). This new policy supercedes existing Agency policy1/.

1.2 The new policy is different from existing Agency policy in three respects: (a) the new policy clarifies the circumstances under which local currency is generated and must be deposited into a separate account; (b) it explicitly permits missions to jointly program local currency to help fund a government's deficit or reduce its debt; and (c) it adopts new accountability standards for managing local currency as explained in separate operational guidance issued by FM.2/ The policy (in contrast to the accountability standards) applies only to host country-owned local currency resulting from assistance provided under the Foreign Assistance Act (FAA); however, important provisions associated with PL 480 and Section 416(b) local currency are included as implementation guidance.

1.3 The key elements of the new policy are summarized in the attached "Local Currency Decision Tree." The decision tree depicts a logical sequence for considering: (a) options for generating and/or depositing local currency; (b) options for programming local currency that has been generated; and (c) accountability requirements linked to each programming option.

1/ Policy Determination No. 5 on "Programming PL 480 Local Currency Generations" (February 1983), and 87 State 327494 entitled "Supplemental Guidance on Programming Local Currency" (October 1987).

2/ State 204855 entitled "Supplemental Guidance on Programming and Managing Host Country-owned Local Currency" (June 21, 1991).

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2.0 Background

2.1 Policy Determination No. 5 (PD-5) on "Programming PL 480 Local Currency Generations" has been the Agency's basic policy statement governing the use of host country-owned local currency since February 1983. The policy was extended in 1984 to cover commodity import programs (CIPs) and cash transfers. It was supplemented in 1987 (87 State 327494) to incorporate A.I.D. monitoring, special account, and trust fund requirements.

2.2 This policy guidance supercedes both PD-5 of 1983 and the supplemental guidance of 1987. It focuses on both the generation and the programming of host country-owned local currency. Separate operational guidance (State 204855) focuses on accountability requirements and management concerns. Questions concerning the new local currency policy should be addressed to AA/PPC. Questions concerning the new accountability standards should be addressed to FM.

2.3 The policy covers host country-owned local currency generated by, or otherwise made available for joint programming as a result of: (a) Development Assistance (DA); (b) the Development Fund for Africa (DFA); (c) the Economic Support Fund (ESF); and (d) the Special Assistance Initiative (SAI).

2.4 Local currency not covered under this guidance includes: (a) U.S.-owned local currency; (b) local currency purchased with A.I.D. appropriated dollars for disbursement under project assistance; and (c) local currency generated under PL 480 and Section 416(b) agreements. However, important provisions associated with PL 480 and Section 416(b) local currency are attached as implementation guidance.

2.5 The policy covers, as a separate item in Section 7.0, local currency which is held in trust by A.I.D. and used largely, but not exclusively, to help meet mission operating expense requirements. The guidance on programming local currency (5.0) and managing local currency (6.0) is not applicable to local currency trust funds.

2.6 The new policy is effective on July 1, 1991. It applies to all local currency generated from obligations made on or after that date. However, some missions may be unable to comply with the policy on July 1, because they are in the midst of negotiating new agreements with the recipient country. Under these circumstances, geographic bureau assistant administrators (AAs) may waive the effective date of the new policy for FY 1991 obligations, as long as such waivers are not prohibited by statute. Copies of such waivers shall be provided to AA/PPC. Waivers for FY 1992 (and subsequent) obligations will not be permitted.

3.0 Policy

3.1 The new policy, like PD-5, recognizes that A.I.D. participation in programming FAA-generated local currency is not an end in itself but rather a tool for moving toward the more important goal of an overall host country budget that represents a sound development-oriented allocation of budgetary resources set within a market-oriented macroeconomic policy framework. It also recognizes that negotiation of the external assistance agreement often constitutes the best opportunity for the U.S. to achieve its development assistance objectives, including the allocation of host country budgetary resources. As a result, joint programming of local currency should normally not be undertaken as a separate exercise additional to negotiating the agreement.

3.2 A.I.D. policy recognizes that local currency generations are not additional resources and should not be viewed and managed as such. A.I.D. also recognizes that the recipient government assumes primary responsibility for allocating its own budgetary resources. At the same time, Agency policy encourages the integration of local currency with external resources (primarily ESF, DA, and DFA resources, and PL 480 food aid) to help achieve specific program and policy objectives and to enhance the developmental impact of the external resources.

3.3 A.I.D. missions must make an initial judgement and reach agreement with the host government on: (a) whether or not the anticipated uses of the dollars disbursed under a cash transfer program or the commodities financed under a CIP will result in the generation of local currency for deposit into a separate account, as described in paragraph 4.0; (b) if not generated, whether or not local currency will still be required to be set aside and deposited into a separate account; (c) if deposited, what constitutes eligible, and ineligible, uses of the local currency; and (d) who will bear what monitoring and oversight responsibilities.

3.4 Local currency that is deposited into a separate account must be programmed consistent with Section 575(a) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1991 (the "1991 Appropriations Act"), which sets forth eligible uses of local currency. Missions should continue to refrain from jointly programming local currency for activities expressly prohibited by legislation governing appropriated funds. In addition, the agreement between A.I.D. and the host country government should prohibit the use of local currency generations for police training pursuant to Section 660 of the FAA, as well as the use of jointly programmed local currency for military or paramilitary purposes.

4.0 Generating Local Currency

4.1 Local currency is generated under commodity import, cash transfer, and non-project sector assistance programs in one of two ways:

(a) first, when the use of FAA dollar disbursements, as specified in the bilateral assistance agreement, results in the receipt of local currency by the recipient government. Examples of such transactions may include dollars used for private sector imports under a commodity import program (CIP) or a cash transfer program. In addition, public sector imports would generate local currency if the recipient government sold the imported commodities to the private sector or to a quasi-private entity, such as a self-financing parastatal body.

(b) second, in the absence of a local currency flow as described in (a) above, when A.I.D. requires a deposit or set aside of local currency by the recipient government as a condition or term of the assistance agreement; (this should be distinguished from the statutory 25 percent contribution requirement of Section 110 of the FAA, which is not subject to the separate account requirement.)

4.2 If generated, the local currency must be deposited into a separate account for joint programming. A.I.D. and the host government may specify in the agreement when during the life of the agreement local currency deposits shall be made and the amounts of local currency to be deposited. Such agreed upon amounts must accurately reflect projected local currency generations under the agreement (State 204855, para. 3.0).

4.3 Local currency need not be generated or deposited into a separate account in all other cases; that is, cases not covered under 4.1(a) and 4.1(b) above. This may occur when dollars are used to service external public sector debt or when commodities are imported by, and for the use of, the recipient government. Likewise, an intra-governmental transfer of the commodities would not generate local currency.

4.4 Missions can always require that the recipient government set aside an agreed upon amount of local currency as a condition of the assistance agreement -- regardless of the actual uses of the dollars. However, before missions exercise this option, they should ensure that budgetary resources are available for such a set aside; if they are not, the recipient government would need to: (a) reduce expenditures for activities that have been included in the budget; (b) increase revenues from taxation or borrowing; and/or (c) print money.

4.5 A.I.D.'s Office of the General Counsel (GC) has reviewed the legal issues associated with the generation of local currency; the key points of GC's conclusions are summarized in Annex A.

5.0 Programming Local Currency

5.1 When local currency is generated, it must be programmed to support economic development objectives as defined in current legislation [Section 575(a) of the 1991 Appropriations Act (FAA)]. Within this context, missions have four basic options. They may program local currency to support one or more of these four options, even though the local currency was generated from a single assistance source. The four options for programming host country-owned local currency are:

(a) investing in developmentally sound projects;

(b) supporting particular sectors of the government's budget;

(c) funding the government's deficit or reducing the government's domestic debt; and

(d) funding A.I.D. administrative costs.

5.2 Each programming option is associated with certain accountability requirements. These requirements are described in the operational guidelines (State 204855) as indicated below:

Programming Options	Accountability Guidelines: Section	Accountability Guidelines: Terminology
(a) projects	6.3.C. 6.4	specific sector support extra-budgetary support
(b) sectors	6.3.B.	general sector support
(c) deficit/debt	6.3.A.	deficit/debt
(d) admin. costs	8.0	OE trust funds

5.3 Jointly programmed local currency may be used to help meet the host country's contribution to A.I.D.-funded projects, including the mandatory 25 percent contribution required under Section 110 of the FAA. Local currency may also be used to support activities funded by other OECD and multilateral donors and private voluntary organizations (PVOs). The host government and A.I.D. should assure themselves that projects supported by local currency meet acceptable technical, financial, administrative, and accounting standards. Projects that are funded and monitored by other donors or undertaken by strong, highly respected host government or private sector institutions would generally meet such standards.

5.4 A.I.D. may also jointly program local currency to help meet the budgetary requirements of particular sectors or ministries of the recipient government, say, the Ministry of Agriculture. In this case, the mission must generally satisfy itself that the quality of overall sectoral activities and the technical and administrative capability of the implementing entity or entities to carry out the program are satisfactory.

5.5 Local currency may also be used to help fund the government's deficit, the effect of which is to reduce public sector borrowing from what it otherwise would be, thereby making those funds available for private sector borrowing. Similarly, local currency may be used to reduce the domestic debt owed by the government to the banking system or to another government (or parastatal) entity. Programming local currency to help fund the public sector deficit or reduce the public sector domestic debt (which is equivalent to supporting the government's overall budget) is normally appropriate only in countries implementing an IMF-sponsored stabilization program and/or a World Bank-sponsored Public Investment Program, under which the domestic money supply and credit ceilings (for both public and private sector borrowing) are firmly established. Jointly programming local currency in this way must first be approved by the Assistant Administrator (AA) of the relevant geographic bureau. This option for programming local currency would not, of course, be applicable in a country where the government was not running a deficit or had no domestic debt.

5.6 In general, jointly programmed local currency should be disbursed as quickly as is consistent with sound programming and prevailing economic conditions in the recipient country. On occasion, however, disbursement delays occur unavoidably. Therefore, A.I.D. policy favors that local currency be placed into an interest-bearing account in a deposit-taking institution, with any interest earned programmed as if it were principal, so long as such accounts are permitted under host country law and regulation and do not undermine internationally-supported stabilization agreements and sound monetary policy.

5.7 Sterilization, or demonetization, is not permitted under the new policy. However, missions may choose to program local currency so it disburses relatively slowly by establishing, for example, an endowment, the earnings of which would be designated to support development programs of NGOs or other appropriate organizations, or a development-oriented guaranty fund.

6.0 Managing Local Currency

6.1 A.I.D. participation in programming and accounting for host country-owned local currency has changed substantially over the past 30-35 years. Prior to 1972 Agency policy and practice generally encouraged A.I.D. involvement in programming and monitoring host country-owned local currency. In 1972 the policy was changed; A.I.D. was not to participate in local currency programming. In 1976 it became obligatory for missions to consider the merits of participation in local currency programming. Beginning in 1983 A.I.D. policy required more active participation in local currency programming. By 1987 greater A.I.D. involvement had led to greater A.I.D. accountability.

6.2 In recent years, the Agency has increasingly been criticized by the Inspector General (IG), the General Accounting Office (GAO) and key Congressional subcommittees for the way in which host country-owned local currency is managed. The management problem appears to be most serious when local currency is jointly programmed as budget or sectoral support rather than as support for discrete projects where the impact of the funding is easier to document. The problem is most visible in countries where a relatively large proportion of U.S. economic assistance is in the form of program (as distinct from project) assistance. In countries where we continue our active participation, we need to handle the accountability concerns of the IG and the GAO more effectively.

6.3 Missions that generate local currency and/or require local currency set asides are required to establish separate accounts, jointly program the local currency with the host government, monitor the implementation of local currency-financed activities, provide regular reports, and permit audits to be conducted. State 204855 clarifies these accountability requirements.

6.4 This new local currency policy has been developed in cooperation with staff of key Congressional committees as well as the Office of the Inspector General (IG). Although neither the Congress nor the IG has been asked to approve the elements of the policy outlined above, both are supportive of the overall thrust of the policy.

7.0 Trust Funds

7.1 A.I.D. has authority to establish trust accounts for host country-owned local currency. If A.I.D. manages or administers local currency owned by the host government for any reason, this can be done only pursuant to a trust fund agreement. The trust fund agreement entered into between A.I.D. and the host government defines the uses to which trust funds may be put, and no other uses are permissible. Finally, the uses specified in the trust fund agreement must be consistent with specific statutory requirements which may be applicable to FAA-generated local currency.

7.2 Trust funds are primarily used by A.I.D. to help meet the administrative costs of its overseas missions. In addition, they have proven to be a useful tool when used, for example, like Project Development and Support (PD & S) funds to facilitate project design and implementation.

7.3 Trust funds utilized to finance discrete new projects or activities are generally not favored, but it is recognized that under exceptional circumstances their use for this purpose may be warranted. The use of trust funds to finance projects must be permissible under the terms of the trust fund agreement between the host government and A.I.D. When trust funds are utilized to support discrete new projects or activities, missions must develop, analyze, justify and implement the activity as if it were an A.I.D. project, including the use of a Project Paper-like authorization document. Given the significant burden on limited mission staffs associated with such trust fund projects, trust funds may be utilized for this purpose only with the approval of the highest A.I.D. official at post. Copies of each such approval shall be forwarded to the Assistant Administrator (AA) of the relevant geographic bureau and to AA/PPC.

7.4 Local currency held in trust, whether used for administrative or program purposes, is not U.S.-owned local currency, and therefore statutory restrictions that apply to appropriated funds do not as a matter of law apply to its use unless specifically applicable to local currency programming.

Since this local currency is administered by A.I.D. as a trustee and is not jointly programmed with the host government, A.I.D. must account for the local currency and report periodically to the host government on the uses of the trust funds (State 204855).

* * *

Implementation Guidance for PL 480 and Section 416(b)

1. The Food, Agriculture, Conservation, and Trade Act of 1990 (the "1990 Farm Bill") and the Agriculture Act of 1949 [Section 416(b)] permit the generation and use of local currency as a statutory end in itself, and not just a by-project of the sale of the food aid. Indeed, unlike the Foreign Assistance Act (and PL 480 Title I), the statutory objectives of monetized PL 480 Title III programs, as well as emergency PL 480 Title II and Section 416(b) assistance, would not be satisfied unless the local currency proceeds were used for their intended purposes.

2. These intended purposes are defined in the legislation: (a) PL 480 Title III [Section 306(b)] identifies 13 specific economic development purposes for which local currency proceeds may be used; (b) PL 480 Title II emergency food aid programs require that the food (if it is not distributed to needy people) may be sold, as long as the local currency is then used for emergency purposes; and (c) Section 416(b) stipulates that sales proceeds may be used either for costs incidental to moving the Section 416(b) commodities or for activities that are consistent with providing food assistance to needy people. [Note that Section 203(d) of Title II applies to the generation and use of local currency by PVOs and cooperatives under non-emergency, as distinct from emergency, programs.]

3. Local currency requirements are complicated, not only when comparing FAA provisions with PL 480 provisions, but also when distinguishing among Title II, Title III, and Section 416(b) monetization programs. Key distinguishing characteristics of local currency generated from the sale of PL 480 and Section 416(b) commodities are listed below.

(a) The 1990 Farm Bill prohibits the use of local currency derived from the sale of food commodities for abortion related activities [Section 403(k)] or to finance the production for export of agricultural commodities that would compete in the world market with similar items produced in the U.S. if such competition would cause "substantial injury" to U.S. producers.

(b) The 1990 Farm Bill requires that 10 percent of the local currency generated under Title III must be used to support indigenous non-governmental organizations (NGOs), but only if the Title III local currency is deposited into a separate account [Section 306(b)].

(c) The 1990 Farm Bill requires separate accounts for Title III programs to the extent determined appropriate by the Administrator. If local currency is generated in a food aid program, it must be deposited into a separate, interest bearing account. In the unlikely event such a deposit is prohibited by local law or regulation or would clearly be counterproductive, a waiver may be granted by the geographic bureau AA. If the requirement for a separate account is waived, A.I.D. must still be able to verify that an equivalent amount of local currency was used for specific economic development purposes [Section 304(a)].

(d) The 1990 Farm Bill requires consultations with the IMF, World Bank, and other donors to ensure that the use of PL 480 local currency for development purposes will not have a disruptive impact on the farmers or the local economy of the recipient country [Section 403(b)].

(e) Programming local currency to support developmentally sound projects is permissible under Title III agreements; to support projects that pertain to emergencies, under Title II agreements; and to support projects that pertain to food assistance to needy people, under Section 416(b) agreements.

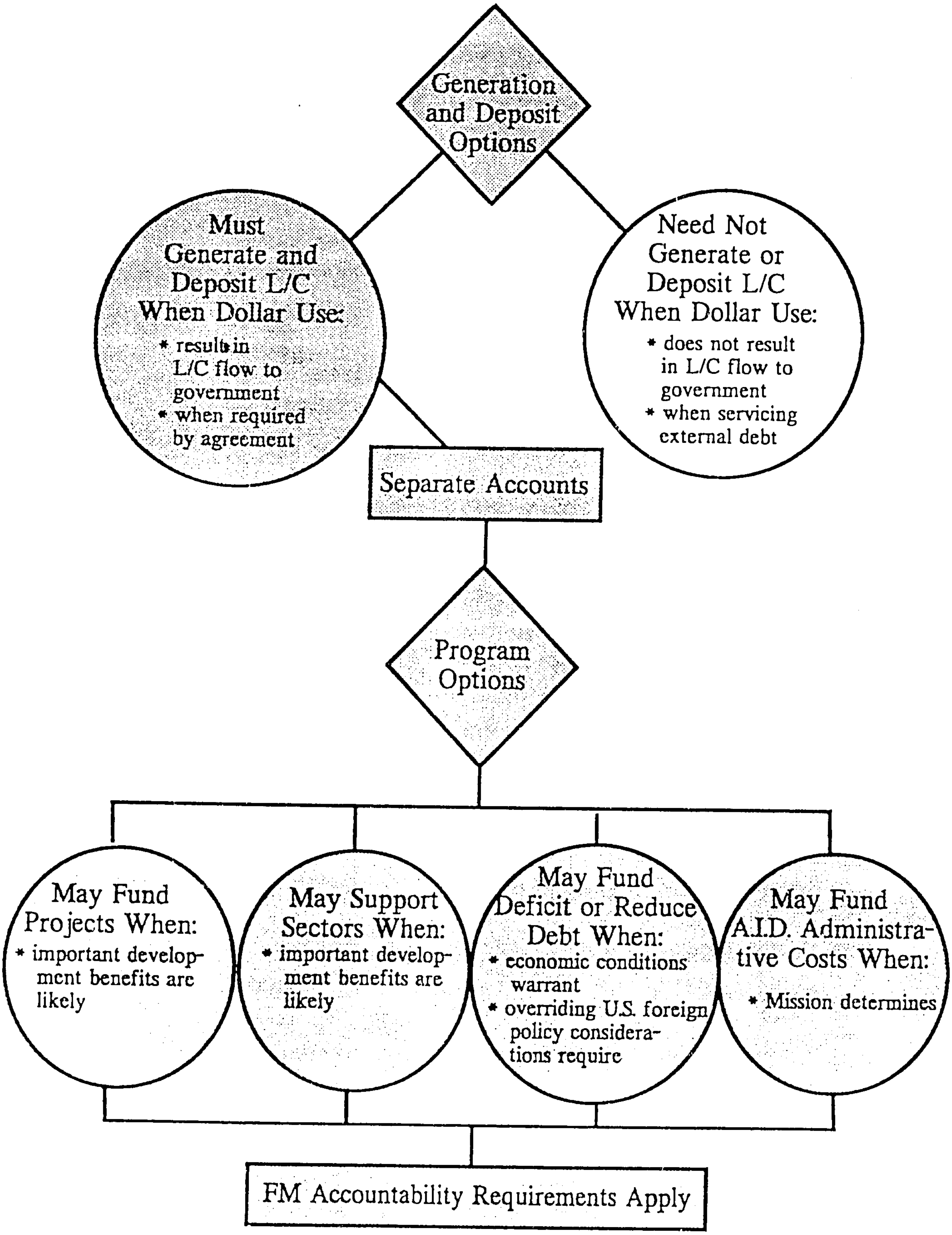
(f) Programming local currency to support particular sectors of the government's budget is permissible under Title III agreements and Title II emergency assistance; and to support the agriculture sector only, under Section 416(b) agreements.

(g) Programming local currency to reduce the government's debt may be permissible under Title III if this use can be justified under one of the specific economic development purposes described in Section 306(a) of PL 480; this use is not permissible under Title II or Section 416(b).

(h) Programming local currency to establish an endowment is permissible under Title II and Title III, but only if established by a NGO (and not by a host country); this use is not permissible under Section 416(b).

(i) Programming local currency to help fund A.I.D. operating expenses is not permitted under PL 480 or Section 416(b).

Local Currency Decision Tree (FAA)



ANNEX A

Generation of Local Currency

A.I.D.'s Office of the General Counsel (GC) has reviewed the legal issues associated with the generation of local currency in its memorandum of March 8, 1991, to AA/PPC, the key points of which are summarized below.

1. As used in section 575(a) of the FY 1991 Appropriations Act, the term "generation" encompasses a tangible flow of local currency to the host government rather than an internal account transaction. Generated local currency is considered owned by the host country rather than by the U.S. Government.

2. The direct and foreseeable use of FAA dollar disbursements determines whether and how much local currency will be generated for purposes of section 575(a) and its separate account deposit and use requirements.

3. Since planned dollar uses must be included in a Congressional Notification, the bilateral assistance agreement also should specify dollar uses. Where dollar uses cannot be specified (e.g., when dollar separate accounts are waived or otherwise not required, or disbursements are commingled) no generation results under section 575(a).

4. Where dollar uses can be specified, but do not result in a tangible flow of local currency to the host government, no generation results under section 575(a).

5. In the absence of a local currency generation (i.e., under the circumstances mentioned in paragraphs 3 and 4 above), the assistance agreement may require host governments to set aside local currency. Such local currency would then be considered a "generation" for purposes of section 575(a) and its separate account deposit and use requirements.

6. All local currency generations are subject to the deposit and use requirements of section 575(a) and assistance agreements may not require the deposit of amounts of local currency less than the amount generated.

Ronald W. Roskens

7-30-91

Date

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