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HARMONIZING LAW WITH NATIONAL AND INTERNATIONAL LEGAL STANDARDS

November 2009

Contract No. 263-I-03-06-00015-00 (REDI Task Order No. 3)

November 30, 2009

This document was produced for review by the United States Agency for International Development. It was prepared by AECOM. The authors' views expressed in this document do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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Contract No: 263-I-03-06-00015-00
REDI Task Order No. 3

USAID/Iraq SO10: Capacity of National Government Institutions Improved
Program Area: Good Governance
Program Element: GJD 2.1- Legislative Function and Process

HARMONIZING LAW WITH NATIONAL AND INTERNATIONAL LEGAL STANDARDS

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November 2009

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IRAQ LEGISLATIVE STRENGTHENING PROGRAM

HARMONIZING LAW WITH NATIONAL AND INTERNATIONAL LEGAL REQUIREMENTS

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I. Introduction

Laws do not exist in isolation. They are part of a legal system and legal framework, and they are applied and adjudicated through administrative procedures. Therefore, laws must properly “relate” to each other, taking account of applicable legal requirements and institutional arrangements. Harmonization refers to the inter-relationship between different laws. (In this paper, the term “law” is used expansively to include regulations and other kinds of legal acts).

Laws can be considered harmonized with each other when they 1) meet all requirements for legality, 2) do not contradict each other in any way, and 3) are sufficiently complementary. Legality means that a law complies with all substantive legal requirements (including formatting rules and the typology of legal acts) and has been enacted according to the rules of procedure. The absence of contradiction means that the law does not violate constitutional rights or international law, and does not prohibit or authorize behavior which is elsewhere permitted or not authorized. Complementarity goes to the next level, referring to reasonable coordination of policy objectives and normative requirements, so that laws achieve their objectives.

There are two fundamental conditions for establishing and maintaining a harmonized and coherent legal system and legal framework:

1. *New laws* must be harmonized with those which already exist
2. *Existing laws* must be harmonized with subsequent enactments having superior force

The first condition is far more common, since most countries produce a large volume of new laws and legal acts every year. However, the second condition should not be overlooked. It arises every time an international treaty is ratified or the constitution is amended. Both conditions must be met, because the Rule of Law starts with an internally consistent body of laws fulfilling all legal requirements, which can then be applied and adjudicated in an objective and timely fashion.

Broadly speaking, there are two categories of standards that apply to both new and existing laws:

1. *National legal instruments and obligations.* These include the constitution, codes, laws, regulations, administrative orders, decrees, by-laws, and court rulings which change law.
2. *International legal instruments and obligations.* These include treaties, conventions, multilateral agreements, rules of trans-national organizations, and applicable decisions of international tribunals and commissions.

Both sources must be reviewed. Generally speaking, the supreme source of law comes first. This could be international law, if the hierarchy of legal acts under national law gives it supremacy. Or, it could be national law, if the subject matter is not covered by international obligations.

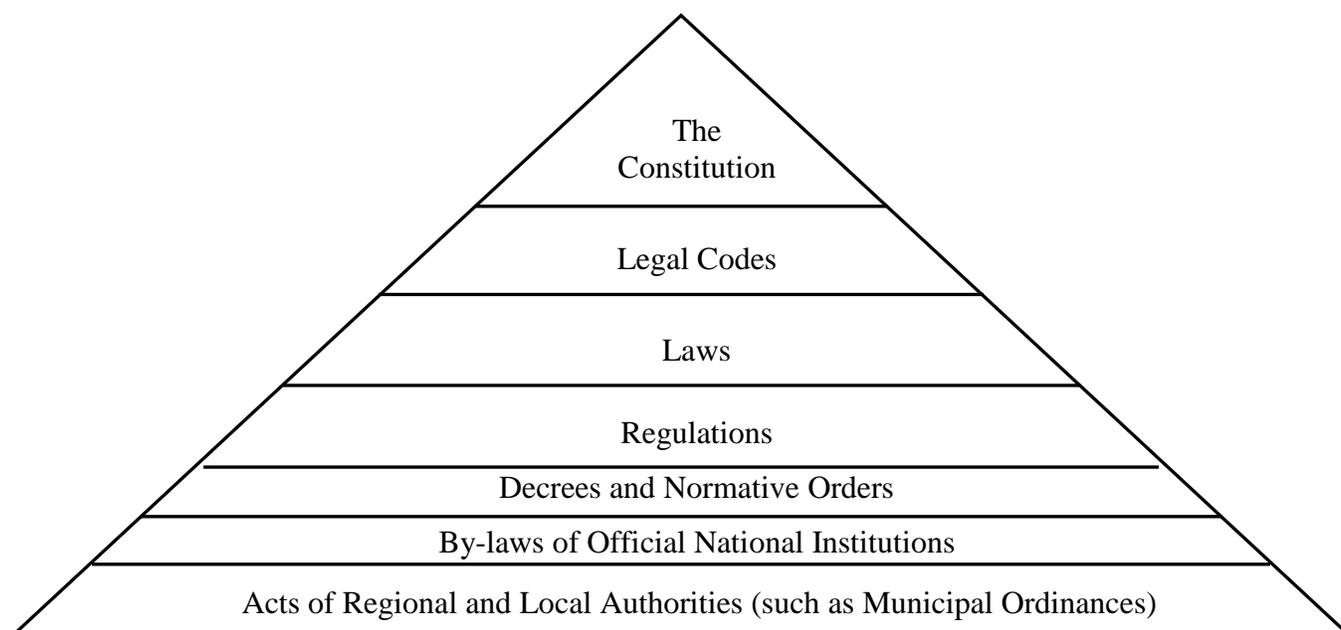
It is important to understand that harmonization is much more than an intellectual exercise. Contradictions between normative requirements create predicaments for the target groups of laws, complicate enforcement, and compromise adjudication. Insufficient coordination between normative requirements undermines implementation and makes laws less sound and effective. Thus, shortcomings in harmonization a) create confusion and uncertainty in the legal system, b) make laws less effective and prevent them from achieving their objectives, c) cause socio-economic harm, d) reduce confidence in the legal system, and e) undermine the rule of law.

II. What is harmonization with national standards?

Harmonization on the national level starts with the principle of **supremacy (hierarchy of law)**. This is usually set forth in the constitution (organic law). Additional requirements and details concerning the “categories of laws”, in the form of a typology, are often found in special legal acts. It could be in a Law on Normative Acts, or Parliamentary Rules. The basic principle of supremacy is that each and every different kind of law must be in conformity with other laws which are equal to or above it in the hierarchy.

Thus, if a contradiction between laws arises, it must be resolved by rescinding or amending the law of inferior status in the hierarchy. In this context, it could be a law, regulation, administrative order, decree, by-law, or any other normative act authorized under the legal system. In addition, court decisions have to be taken into account, to the extent that they modify law.

The following chart demonstrates a sample hierarchy of laws, on the national level (not indicating the position of international law):



There are three requirements for harmonization in the national context:

- 1) New laws must comply with pre-existing laws of superior status. Therefore, laws must be constitutional, regulations must comply with laws, etc. Any non-compliant provisions of new laws of inferior status are void *ab initio*, and should not exist.
- 2) New laws should not contradict pre-existing laws of equal status. While the most recent law is given priority, as a principle of legislative interpretation, the best practice is to avoid contradictions or discrepancies in the first place.
- 3) New laws should rescind or amend any non-compliant pre-existing laws of inferior status. If this requirement is not met, for any reason, then the non-compliant provisions of pre-existing laws must be eliminated or modified directly.

The first requirement ensures that new laws respect the principle of supremacy with respect to existing laws. The second requirement ensures that laws of equal status respect each other. The third requirement ensures that existing laws respect the principle of supremacy with respect to new laws of superior status.



1) Accordingly, first and foremost, new and existing laws must comply with the constitution (supreme organic law). This includes both the text of the constitution and all decisions which interpret it. In some jurisdictions, there are mechanisms for securing advisory opinions or expedited decisions from the Supreme Court or Constitutional Court. The parties which can exercise this right are specified. However, in the overwhelming majority of cases, decisions regarding constitutionality are made by legal experts involved in the legislative drafting process. These experts have a more difficult task in countries which are in “transition”, or in the process of establishing democratic and representative institutions. This is because the constitutions are new, have not been interpreted often, and may be subject to frequent amendment.

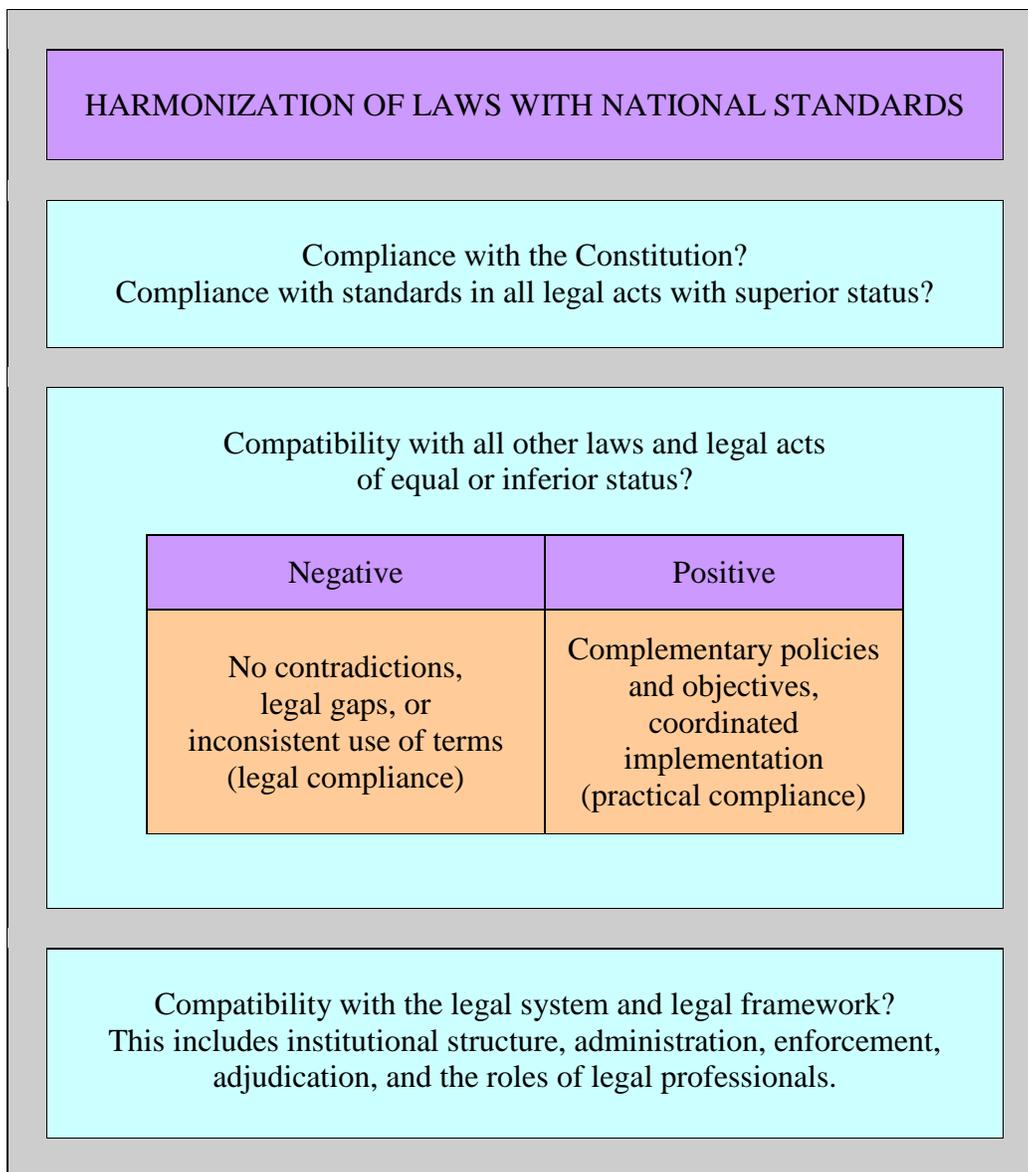
2) Second, new laws must properly relate to existing laws. This starts with “procedural” requirements concerning the structure and format of laws, and their normative typology. It then includes “substantive” requirements found in specific laws that deal with the same subject matter(s). In this regard, many different aspects of laws need to be harmonized. This includes specific legal provisions, definitions and the usage of terms, and transitional provisions (covering jurisdictional issues and entry into effect).

In a practical sense, harmonization between laws includes “negative” and “positive” aspects. The former refers to the absence of contradictions, which in a purely legal sense is the most important requirement. The latter refers to the existence of actual harmony between laws. It includes commonality of purpose, based upon compatible policy objectives and practical goals. Laws which meet only the first aspect of harmonization will not be legally incompatible, but may still fail to effectively serve socio-economic interests. In other words, they may pass the legal test for harmonization, but fall short of the practical requirements.

One exception to the above requirements should be mentioned. Under the hierarchy of laws, there can be legal acts with limited scope or application. For example, certain institutions may be empowered to adopt acts which apply only to their own operations, or self-governance. These include Parliamentary Rules of Procedure, Ministerial By-laws, Resolutions, etc.

3) Third, although not strictly required under the principle of supremacy, new laws should comply with and fit into the legal system and legal framework. This is a broader question than constitutionality or the relationship between specific laws, since there are numerous requirements with diverse origins. For example, the structure and roles of governmental and juridical institutions must be respected, key characteristics of the administration and enforcement of justice must be accounted for, and the functions/competencies of different legal professionals must be respected. These issues can only be addressed through respect for the “big picture”.

The following chart summarizes the requirements for harmonizing national legal standards:



Finally, it should be understood that the above principles do not in any way limit or restrict the power of the legislature to rescind or amend existing laws. Rather, they require that rescission and amendment be carried out in a deliberate and thorough manner. Provisions which rescind or amend existing laws should be express, complete, and legally precise. The provisions being altered must be explicitly identified. And the changes must be very clearly set forth. There should never be any inconsistencies or legal gaps. Legal certainty must be ensured.

III. What is harmonization with international standards?

Harmonization of law with international standards is conceptually similar to harmonization on the national level. However, the analysis and application of international standards takes on an entirely new dimension. Harmonization with national standards involves the internal consistency of a unitary legal system. Further, there are limited and defined sources of law, and a finite number of juridical institutions. Harmonization with international standards involves the relationship between two entirely different systems. Further, the international arena presents multiple sources of diverse kinds of laws, creating dynamic and developing standards of

constantly increasing complexity. As a result, harmonization with international standards has become a multi-faceted challenge, which affects many different interests and requires the evaluation of many different factors.

While there must be complete compatibility between laws on the national level, there are different “degrees” of harmonization between national law and international standards. “Transposition of law” or “legal surgery” refers to complete and full introduction of international standards in the national legal system. In contrast, “legal approximation” or “convergence” is the process of gradually bringing legislative solutions closer to certain defined external standards, without immediate need to make them identical. It is also helpful to distinguish “hard law” (such as treaties and conventions) from “soft law” (such as model laws and restatements). Both of these distinctions concern the degree of compliance required and the applicable timeframe.

In the current format, international legal harmonization has its origins at the end of the nineteenth century, when the nation-state system began to take shape, and the first truly international institutions were created. International harmonization accelerated significantly after the Second World War, with the creation of the United Nations system and the first global financial institutions (such as the World Bank and International Monetary Fund). The Information Revolution and the fall of the Berlin Wall served as major catalysts. The result is a truly global economy and international legal system.

However, international legal harmonization is not a new process. In fact, sharing law is a *recurrent* and *inherent* feature of human development. Most legal systems throughout human history have borrowed, copied, ratified, or been forced to accept codes of law or individual laws originating elsewhere. Most great civilizations expanded the jurisdiction of their legal systems, through force or persuasion. Many “Law-Givers” created and influenced legal systems and institutions. Prominent examples include Moses, Hammurabi, Solon, Justinian, Mohammed, Confucius, and Napoleon.



This process is often called “**Legal Borrowing**”. There are many illustrative examples:

- The Ten Commandments are perhaps the most concise and disseminated of all legal texts
- Roman law was extended throughout the empire, and served as a major unifying force
- Islamic law spread rapidly in the seventh century, and since then throughout the world
- The re-introduction of Roman law (as codified by Justinian in the sixth century) was at the heart of the European Renaissance
- *After* independence, the American colonies followed British law and procedure (as codified in Blackstone’s “Commentaries”, a handy two-volume compilation owned and regularly consulted by most lawyers)
- Modern maritime law can be traced back to ancient Greece, particularly Rhodes
- The French *Code Civil* has been applied or utilized in dozens of countries, in Europe and throughout the world

Legal Borrowing is often carried out by prominent leaders. Examples include the post-independence leaders in Latin America, the Meiji in Japan, and Mustapha Kemal Ataturk in Turkey (who chose the Swiss Civil Code as a model). Legal professionals can be a major force

behind legal borrowing. They are naturally motivated by the desire to introduce prestigious, coherent, and accessible laws that have proven effective in other jurisdictions.

The examples given above show that while cultural factors impose some limits on Legal Borrowing, the most important factors are the quality and consistency of the laws being borrowed, and the strength and motivation of the catalysts for their introduction.

However, despite these historical antecedents, the situation in the twenty-first century is fundamentally different. At this time, every country in the world faces a multi-dimensional international system with a virtually endless array of mutual and shared obligations which are not under the control of any single party. Requirements can be found in a vast number of international, multilateral, and bilateral conventions, treaties, and agreements. They are formulated and applied by international institutions (such as the United Nations and its numerous agencies and bodies, the International Court of Justice, the International Criminal Court, the World Trade Organization, the World Bank, and the International Monetary Fund), regional bodies (such as the European Union, the Council of Europe, the Organization of American States, the Association of South-East Asian Nations, the Organization for African Unity, the North American Free Trade Association, and Mercosur), and multi-lateral institutions dedicated to legal standardization (such as the United Nations Commission on International Trade Law).

In certain instances, international obligations established by supra-national institutions are *self-executing*. This means that they apply automatically on the national level, without ratification or other formal action. This is the case with much of European Union law. Other international obligations, while not mandatory, are still a precondition for important economic or political benefits. In such cases, countries have the right to opt out, but do so to their own detriment.

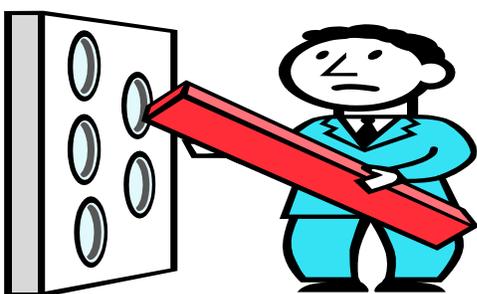
As the current international system becomes fully “globalized”, many countries are in the process of bringing their laws into compliance with international principles concerning democracy, a free market economy, and human rights. The parameters of this process depend greatly upon whether the objective is harmonization or legal approximation.

Full harmonization is a challenging obligation. A country which joins the Council of Europe and ratifies the European Convention for the Protection of Human Rights and Fundamental Freedoms must import and extend to its citizens a complete regime of legal rights, developed over decades. These rights can be enforced through national courts, which must modify their practices, or at the European Court of Human Rights in Strasbourg, which has appellate jurisdiction. Membership in the European Union entails transposition of the entire *Acquis Communautaire*. The historic accession of ten new countries in May 2004 showed how difficult this process can be. Membership in the World Trade Organization requires the application of many principles (such as Most Favored Nation and National Treatment), and the expeditious compliance of national law with the Agreements on Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary Measures (SPS). This requires amending existing laws, establishing new institutions with international functions, creating a new regulatory regime for accreditation and conformity assessment, and modifying commercial practices to promote product standardization and safety.

The process of full harmonization places significant demands and pressure upon the legislature, administrative and juridical institutions, government officials, and members of the legal profession. Timeframes are usually extremely short, while expectations are great. There may be pressure to simply import and apply international standards wholesale, without full consideration of the actual and likely effects.



Legal approximation, on the other hand, is a longer and more variable process, which depends upon the specific sphere of activity and the objectives. When the process and timing are more flexible, it is possible to identify and prioritize essential areas for approximation, take different models into account, consider local conditions, and design a more tailored approach.



At first glance, greater flexibility and a longer time-frame appear to be advantageous. However, this prolongs the decision-making process, complicates the prioritization of standards, and enables interest groups who will be affected by the outcome (both positively and negatively) to exert influence. The process takes on new parameters and dynamism. It may even become politicized.

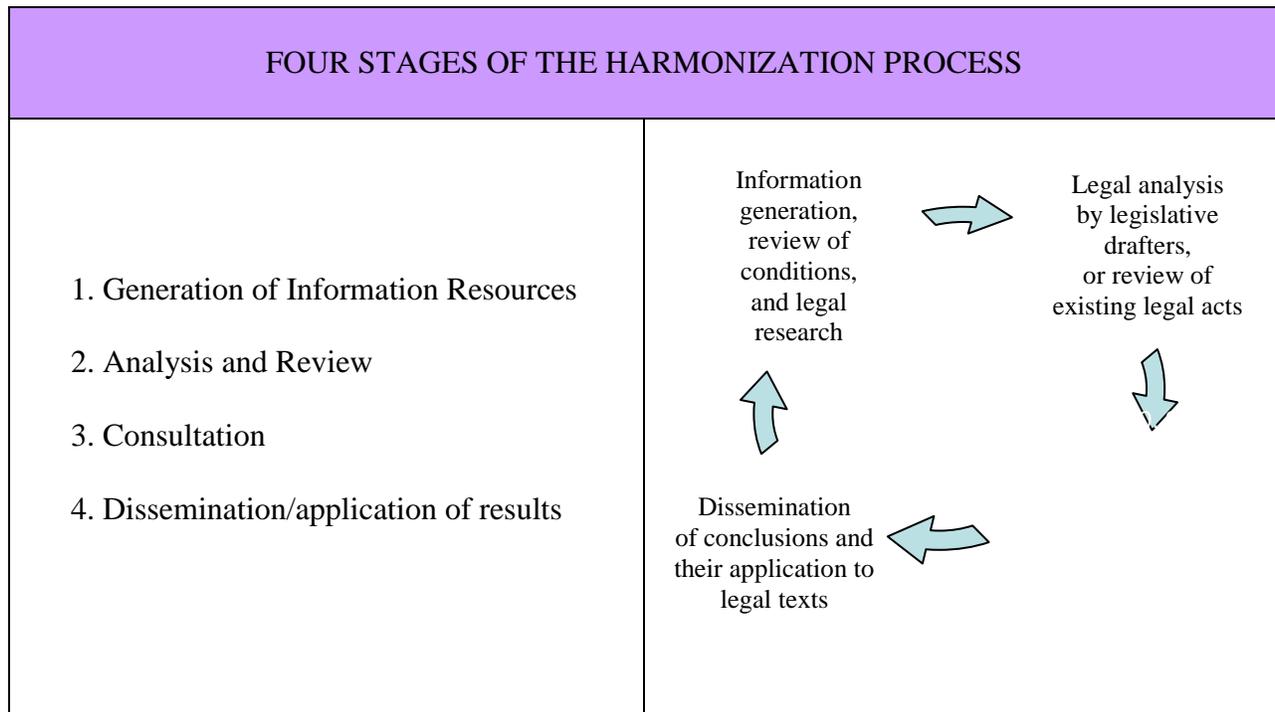
Thus, ironically, harmonization is in many respects more straightforward. It is clear what has to be done, and the only variables concern how and when. Under such circumstances, the key to ultimate success is identifying mechanisms for securing compliance, setting a proper foundation for the work, establishing a sound pace for reform, and maintaining commitment over time.

Unfortunately, Legal Borrowing is not a purely scientific process. Laws exist as part of a system. Their success in a particular jurisdiction can depend upon “subjective” factors, such as special institutions, legal traditions, social values, and even natural resources and the environment. A law, provision, or practice which is effective and perhaps even essential under certain socio-economic conditions and administrative structures may be less productive or even counterproductive in a different context. It is important to determine whether this will be the case in advance, if possible. This can be achieved by assessing the relationship between the law to be transplanted and the socio-legal context of the recipient, and by comparing the socio-legal context of the donor and recipient countries.

In spite of limitations in the process of Legal Borrowing, the current trend is to require full harmonization with all directly applicable international standards. Many principles of international law are now considered universal and binding upon the family of nations. While many conventions do need to be ratified, such as the Universal Declaration of Human Rights and the International Covenant for Civil and Political Rights, there is a tendency to make key obligations *self-executing*. This includes prohibitions against genocide, war crimes, and crimes against humanity. While there is no such moral imperative when it comes to international commercial law, it is clear that failure to ratify and apply standard practices jeopardizes the right of countries to participate in the trading system, and thereby obtain important benefits.

IV. How is harmonization carried out?

Conceptually speaking, the methodology for harmonizing laws can be divided into four stages:



1) Generation of Information Resources

Several different kinds of information are required for carrying out the analytical work which forms the backbone of legal harmonization. First of all, it is necessary to have copies of all relevant legal texts, and in the appropriate language(s). Next, it is necessary to have first hand information concerning actual conditions, including the application of laws in practice and the functions of institutions which are responsible for administration and adjudication. Finally, it is helpful to have access to juridical materials such as expert analysis, explanatory articles, assessment reports, and model laws. All of this information should be organized in a user-friendly manner, preferably in electronic databases that facilitate rapid and comprehensive research.

2) Analysis and Review

Legal experts who review and analyze draft or existing laws need to start out with solid knowledge of and experience with the subject matter. This can be acquired through legislative drafting, scholastic work (teaching and research), the practice of law, and business or social activities. In addition, strong analytical skills are required, in order to assess whether there are actual or potential inconsistencies between different laws. Practical experience is very important, since it is necessary to consider how laws actually function in the real world.

In order to properly and systematically conduct legal analysis and review, it is a best practice to have checklists to fill in and questionnaires to answer.

**EIGHT QUESTIONS TO ANSWER DURING THE ANALYSIS OF DRAFT LAWS
TO ENSURE HARMONIZATION WITH NATIONAL STANDARDS**

1. Is a new law necessary at all, in light of existing laws and conditions, or is a different type of normative act or official initiative more appropriate?
2. Will policies, goals, or provisions of the new law be affected by existing law?
3. Does the new law replace, amend, or affect existing law?
4. Are the definitions and usage of legal terms in the new law consistent with existing law and administrative practice?
5. Will any new terms conflict with those in existing law or cause confusion?
6. Are all provisions in the new law that repeal or amend existing law carefully drafted and technically correct?
7. Are all provisions concerning the timing and effective dates of the new law correct, or will there be contradictions or gaps that create uncertainty?
8. Will complications arise concerning interpretation, implementation, or adjudication of the new law, in conjunction with existing law and institutional practice?

International standards present particular challenges, particularly when they automatically have superior status under the hierarchy of laws. Both draft and existing laws must comply with actual requirements.

**FOUR QUESTIONS TO ANSWER DURING THE ANALYSIS OF DRAFT LAWS
TO ENSURE HARMONIZATION WITH INTERNATIONAL STANDARDS**

1. Does the draft law comply with the text of ratified international agreements?
2. Does the draft law comply with the standards established by tribunals in applicable cases, decisions, or rulings?
3. Does the draft law comply with the prevailing approach to implementing international standards, as elaborated by scholars and legal experts?
4. Does the draft law comply with the rules of any international institutions that have jurisdiction over the subject matter?

There are many different ways to perform the analysis. The best choice depends upon the subject matter, context for the work, and situation on the ground. It can be extremely helpful to prepare lists and charts which specify the statutory provisions applicable to different subject matters. For example, rights relating to employment can be found in a number of different international legal instruments. Listing them in charts with excerpts of the applicable provisions facilitates comparison, and makes it easier to contrast and evaluate. Computerized databases can help.

Legal analysis is time consuming work. It requires focus and attention to detail. Unfortunately, legal experts usually have an excessive amount of work to perform, while facing very strict deadlines. For this reason, it is extremely important that they have good working conditions. This includes modern information and communication technology, access to sound information resources, and opportunities to communicate with colleagues.

Finally, it is important to emphasize that assessments of legal compliance must go beyond the text of laws. There can be significant divergence between legal texts and implementation/practice. This is because the implementation of laws is a process which involves institutions and individuals. It is possible for the text to be compliant with applicable standards, while those standards are not in fact realized in practice. This is why practical knowledge and experience on the part of legal experts is so important. Particularly with respect to international standards, and even more so in the field of human rights, compliance issues are ultimately determined by what is happening in courtrooms, police stations, correctional facilities, and on the streets.

3) Consultation

Legal analysis is not generally considered to be a collective activity. However, harmonization is much more complete and accurate when legal experts with different backgrounds share their opinions and experience. Specific expertise which should be brought into the process can be solicited from legal experts who work with:

- Governmental institutions
- Social services providers
- Private companies
- Non-Governmental Organizations
- Professional associations
- Trade Unions
- Think tanks
- Law faculties and universities
- Institutions which train judges, prosecutors, and lawyers
- The media



It should be remembered that *it is precisely these legal experts who are most likely to challenge a non-compliant law after it is approved or when it is being implemented*. Therefore, it is both logical and expeditious to **secure** their legal expertise before the law is final, instead of **combating** their legal expertise after the law is passed.

Suitable techniques for consultation include:

- The circulation of legal texts for written comments
- Conferences, seminars, and workshops
- Informal meetings
- Communication through the media
- Open hearings

Information and communications technology can make a significant contribution to these consultations. For example, legal texts can be placed on websites for open comment, and Voice

Over Internet Protocol (VOIP) can be used to enable parties who are far away from each other to talk and exchange opinions for free.

The value of sharing opinions and engaging in interactive discussions in order to reach sound conclusions regarding the compliance of draft legal texts should not be underestimated. Good results are much more likely when legal experts work together. This is especially the case when they have complementary knowledge concerning different aspects of an issue, or experience in diverse geographic locations.

4) Dissemination and Application of Results

The results of legal analysis must be disseminated and brought to the attention of all interested parties, and then be put to good use.

This can be done through reports, informational presentations, electronic communication, and effective use of various media. During the legislative drafting process, the key parties who should be fully informed include Government officials, members of legislative Working Groups, Members of Parliament, and representatives of legal departments. When the legislative drafting process is open and consultative, it is much more likely that sound legal analysis will reach the attention of parties who can influence the structure and content of laws.



V. How are laws harmonized during the drafting process?

The harmonization of draft laws takes place within the specific context of the legislative drafting process. Therefore, the role of different parties depends upon the nature of the system, including the institutional structure and the procedural rules. Still, there are a number of general principles and best practices which are universally applicable, in order to enhance the quality of draft laws.

SEVEN GENERAL PRINCIPLES FOR PROMOTING HARMONIZATION AND COMPLIANCE DURING THE LEGISLATIVE DRAFTING PROCESS

1. Harmonization and compliance issues should be fully dealt with **before** laws are passed
2. Harmonization should be carried out from the start of the legislative drafting process
3. Harmonization should be carried out systematically, and at all appropriate stages of the legislative drafting process
4. Legal expertise should be secured from all knowledgeable and involved parties
5. Analysis and conclusions concerning compliance issues should be fully documented
6. Analysis and conclusions concerning compliance issues should be disseminated and applied
7. There should be sufficient time for legal analysis

Each of these seven principles will be considered in turn:

1) The first guiding principle is that harmonization and compliance issues should be fully dealt with before laws are passed. This sounds elementary, but the fact of the matter is that mistakes do occur. And there is no such thing as a small mistake during the legislative drafting process. As a consequence, amendments and revisions are required. Legal certainty is sacrificed, target groups become confused, time and money are lost, and the rule of law is undermined.

2) The second guiding principle is that harmonization should be carried out from the start of the legislative drafting process. Indeed, it is important to secure preliminary advice concerning compliance issues during the policy-making phase, when the law is designed. Sound elaboration of the objectives of a law sets the stage for accurate drafting of provisions. Further, proponents and drafters of new laws have initial and primary responsibility for ensuring that they comply with legal requirements, from the start of the drafting process until approval by the Parliament.

3) The third guiding principle is that harmonization should be carried out systematically, and at all appropriate stages of the legislative process. Expertise is regularly required by all parties who draft, assess, and approve laws, whether they work in specialized institutions, the Government, Line Ministries, or Parliament. Further, laws are often changed during the process which creates them. All amendments must be evaluated, to assess their relationship to the rest of the draft, existing laws, and international standards. It does not make sense for legal experts to perfect for an early version of a draft law, only to have an amended/legally incorrect version passed by Parliament. The legislative process must be structured and timed to facilitate legal review of increasingly finalized versions of draft laws, and to take account of supplemental legal expertise.

4) The fourth guiding principle is that legal expertise should be secured from all knowledgeable and involved parties. Consultation is crucial for ensuring compliance (justifying its place as the third step in the harmonization process, discussed in Section IV above).



Full opportunities to provide legal expertise should be extended to Members of Working Groups, specialists at Ministries, legislative drafters, and staff in Legal Departments (attached to the Government, Ministries, Parliament, and/or Office of the President, depending on the legal system). Legal experts outside governmental institutions should also be fully included in this work.

4) The fifth guiding principle is that analysis and conclusions concerning compliance issues should be fully documented. The most appropriate place to do this is in the **Explanatory Note** which accompanies draft laws.

Information which should be documented includes how the new law interacts with existing laws, whether existing laws need to be amended or revoked, how the new law fits into the existing legal framework, and how implementation will be secured.



Unfortunately, even when it is mandatory to place this kind of information and analysis in the Explanatory Note, the task is often handled in a perfunctory or *pro forma* manner.

It is important to emphasize that the special legal expertise described above is not required by all parties engaged in drafting or approving laws. It is sufficient if non-experts:

- Fully respect constitutional requirements and coherence of the legal framework
- Understand the principle of supremacy, and the need to coordinate new and existing laws
- Obtain, share, and accept legal expertise regarding compliance issues

6) The sixth guiding principle is that analysis and conclusions concerning compliance issues should be disseminated and applied. This corresponds to the fourth step in the harmonization process (described in Section IV above). Unfortunately, it is not sufficient for the work to be inclusive and documented. Analysis/results must be shared with all interested parties, considered, and utilized, in an atmosphere of cooperation and transparency. Modern information and communication technology can play a key role, at minimal cost, and should be put to full use.

7) The seventh and final guiding principle is that there should be sufficient time for legal analysis. The pace of the legislative drafting process can significantly affect compliance. Many countries produce numerous laws on a strict and aggressive timetable, set to serve political objectives. But accelerated legislative calendars place excessive pressure on legal experts, and cut the consultation process short. They fail to acknowledge the fact that correctly performed compliance checks take time. Countries in transition are notorious for expediting the legislative drafting process, and producing too many new laws in too little time.

Under such circumstances, there is a much greater chance that new laws will not be properly harmonized, or be fully consistent with existing laws and international standards. Further, these problems may be exacerbated by uncertainty concerning the role and function of different kinds of laws (primary vs. secondary) and the operations of different legal institutions.



Clearly, compliance with these seven principles will greatly enhance the quality of laws under any legal system, by promoting harmonization and quality control.

Finally, it is very important to note that full legal harmonization involves much more than simply drafting laws that contain provisions required by the national legal framework or international conventions. Harmonization also depends upon implementation. Therefore:

- There must be political and administrative support at all levels of government for ensuring that laws are implemented in accordance with applicable standards.
- There must be sound implementing regulations, whenever required.
- Administrative institutions need commitment and capacity to carry out their mandates and supervise compliance. This includes a) an effective, professional, and well-trained civil service, b) necessary facilities, equipment, and resources, c) sufficient inter-institutional linkages, and d) sound communication and information-sharing practices.
- Courts must adjudicate and facilitate the enforcement of all applicable legal standards. This requires good facilities/equipment, qualified personnel, and sound procedures.
- There must be awareness and acceptance of the importance of harmonization and compliance by businesses, legal professionals, civil society, and the general public.

In other words, legal harmonization is more than a criterion for legislative drafting. It is part of a complicated and extended process that only begins with passing a law. Indeed, the realization of national and international legal standards is ultimately a question of implementation. Therefore, making laws practical and effective is a key component of harmonization.

The following diagram summarizes key principles for harmonization during legislative drafting:



VI. Conclusion

For laws to be harmonized with each other, and meet national and international legal requirements and standards, all provisions must fulfil the conditions for legality, and be free from contradiction. In addition, all provisions should be compatible, to promote the objectives of laws. The two fundamental conditions for establishing and maintaining a harmonized and coherent legal system and legal framework are 1) that new laws be harmonized with those which already exist, and 2) that existing laws be harmonized with any subsequently enactments which have superior force.

For laws to be fully sound, all provisions must be both necessary and correct. Legal provisions which require harmonization are amongst the most important to get right, the first time. This is because any error will inevitably affect other laws, and conflict with national requirements and international obligations. In addition, failure to harmonize creates confusion on the part of parties charged with administering, enforcing, adjudicating, and complying with laws. This results in legal uncertainty, and undermines the rule of law.

Therefore, it is necessary for all parties involved in the legislative drafting process to seek legal expertise. In addition, legal experts should have every possible opportunity to ensure that the typology of laws is followed, the principle of supremacy is respected, the provisions of draft laws are compared to existing laws, and all relevant international standards and obligations are fulfilled. In addition, when a legal act of superior force affects pre-existing laws, all aspects of this relationship should be addressed in the legal act. Otherwise, pre-existing laws have to be thoroughly reviewed, to determine the need for and draft any required amendments.

In order to achieve harmonization, institutions and legal experts both inside and outside of government must generate all required information resources, conduct full analysis and review of draft and existing laws, consult with each other, and disseminate and apply the results of their work. Then, the requirements for harmonization must be taken into account during the application of laws. After all, results in practice are what counts, not just the accurate wording of legal texts.

It is very important to appreciate that harmonization is a process, as well as a result for specific laws. It needs to be built into the legal system and legislative drafting process, carried out systematically over time, and respected by all involved parties. There must be sufficient resources, including information, information and communications technology, human expertise, and time. This is the only way to ensure positive results, and thereby protect legal interests, human rights, and the rule of law.

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