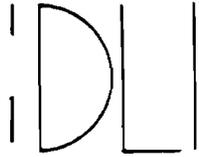


- PD-ABJ-597

Cooperative Agreement N° ANE-0056-A-00-6048-00



International
Development Law
Institute

D R A F T

REQUEST
TO THE UNITED STATES AGENCY
FOR
INTERNATIONAL DEVELOPMENT
(AID)
FOR
EXTENSION OF COOPERATIVE AGREEMENT
AND
SUPPLEMENTARY FUNDING

August 17, 1988

BEST AVAILABLE COPY

I. BACKGROUND

Cooperation agencies and developing country ministries are beginning to recognize the importance of law in development. Project financing, contracting and investment involve the negotiation, review, drafting and performance of agreements. Yet developing countries often fail to derive full benefit from international transactions, because their representatives lack basic legal skills and legal information. In many cases they are forced to learn the "rules of the games" at the bargaining table.

The potentially important role of legal advisors in international commercial transactions is frequently overlooked. Trade and investment opportunities which could have proved mutually advantageous in the private sector are often lost when a developing country is unprepared to deal with technical legal issues arising in specialized agreements. In development assistance, there are similar lost opportunities, delays and excessive costs when developing country officials lack familiarity with aid agencies' regulations and procedures.

The International Development Law Institute, based in Rome, Italy designs and conducts practical training for developing country legal advisors and lawyers. Its courses, seminars and in-country training workshops emphasize the rules and procedures for international transactions (including development assistance arrangements) and strengthen the negotiating and contracting skills necessary to achieve fair and durable agreements.

IDLI's ability to respond to the training needs of development lawyers is evidenced by the wide acceptance of its initial programs. In less than five years, the Institute has trained nearly 700 participants (21% women) from 89 countries.

II. TRAINING PROGRAM

With a target audience of mid-career legal advisors to economic ministries, state-owned enterprises, banks and financing agencies involved in international transactions, IDLI offers:

The Development Lawyers Course. This twelve-week course, conducted each year in both English and French language versions, has a simply stated objective:

"At the end of the course, participants will have improved their ability to apply seven basic lawyering skills in the areas of project financing, international contracting and foreign investment."

The DLC is the centerpiece of IDLI's program. It is designed to strengthen the participant's knowledge about development lawyers' functions, skills in performing those functions and attitudes toward the lawyer's role in the development process — all with the idea of helping the participant perform more effectively back on the job.

The first four weeks focus on important skills of the development lawyer:

- Advising governmental clients;
- Negotiating agreements;
- Planning and designing legal arrangements in development projects;
- Drafting agreements and other documents;
- Reviewing and revising legal and related documents;
- Monitoring the fulfillment of legal obligations; and
- Resolving disputes.

During the remainder of the course, participants apply those skills in the following subject areas:

- International project financing;
- International procurement of goods, services and civil works; and
- Foreign investment.

.International Business Transactions Seminars. These two-week seminars, also offered in both anglophone and francophone versions, impart current information in technical legal fields identified as priorities by developing country government officials and lawyers. Akin to "continuing legal education" in industrial countries, IBT seminars have in the past covered such diverse topics as "International Construction Contracts", "Resolving International Contract Disputes", "Commercial Financing for Development" and "State-Owned Enterprises." The schedule for 1989 courses and seminars may be found in the Training Program, 1989 (Annex A).

.Training Workshop. In addition to its regular program in Rome, IDLI designs and conducts training workshops in developing countries at the request of governments and organizations. Examples include a workshop on Company Law for draftsmen of the Chinese Company Law and legal advisors to public enterprises for the State Economic Commission of the People's Republic of China; and other programs (on legal topics

related to private sector development) in Pakistan, Cameroon and Indonesia. In November, 1988, IDLI will conduct a workshop in Cairo, Egypt for the training of Third World arbitrators, in collaboration with the Regional Centre for International Commercial Arbitration.

.Staff Interventions. IDLI trainers also participate as visiting instructors in programs organized by other training institutions, such as the World Tourism Organization (WTO), the Italian Institute for Foreign Commerce (ICE) and the Helsinki School of Economics, Program of Development Cooperation (PRODEC).

III. ADMINISTRATION AND FINANCE

IDLI was established as an international non-governmental organization (NGO) in 1983. In order to enlarge prospects for voluntary contributions among European and Asian donor organizations and to make it possible to conclude a headquarters agreement with the Government of Italy, IDLI is transforming its legal status from NGO to international organization. On February 5, 1988, eight governments (including the United States) signed an agreement to establish IDLI as an international organization (Annex B).

Although IDLI subject matter is politically sensitive (North-South commercial negotiations and national law reform), the Institute's lawyer-to-lawyer approach is professional, technical and non-political. Indeed, this problem-solving methodology has been successful in attracting as participants, government officials and private practitioners from countries with widely differing economic and political policies.

In order to avoid politicization, a scientific and professional Board of Directors, selected on non-political grounds, will retain primary responsibility for policy direction. IDLI's Board now numbers twelve, representing nine nationalities. Dr. Ibrahim F.I. Shihata, Vice-President and General Counsel of the World Bank and former Director General of the OPEC Fund, is Board Chairman. The Institute's permanent staff is similarly international: fifteen persons representing seven nationalities.

IDLI's budget, approved by the Board for the three-year period 1988-1990, is set forth in Annex C. At least half of the operating costs are covered by tuition revenues, workshop fees, endowment and other income. The remaining requirements are met from institutional grants. A cumulative list of donors is attached in Annex D.

A financial audit is conducted annually by an independent accounting firm (Price Waterhouse). The audit report is reproduced each year in the Annual Report and distributed in that form to donor organizations and other interested parties. The Audit report for 1987 may be found in the Annual Report, 1987 (Annex E). At the suggestion of a major donor, the audit report now includes a "Statement of Contributions and Sponsorship Income".

IV. PAST USAID SUPPORT

The United States Agency for International Development has played a continuous leadership role in IDLI's establishment: from feasibility study in 1982 to reestablishment as an international organization in 1988.

.AID granted leave-without-pay (LWOP) in August 1982 to two of the Institute's three founders (Messrs. Hager and Loris), who were then Agency Legal Officers. They served on that basis until February 1986 when their employment status was changed to "reimbursable detail".

.USAID contributed \$ 500,000 as a seed grant in August 1982 for the initial IDLI project "feasibility/organization" phase and an additional \$ 135,000 in March 1984 as bridge financing. Both grants were channelled through AMIDEAST, an American PVO, and have been fully dispersed and accounted for in IDLI financial reports.

.A USAID evaluation published in May 1985 concluded that IDLI had successfully achieved the purposes of the previous USAID assistance.

.In September 1985 the AID Private Enterprise Bureau made available to IDLI through AMIDEAST (Cooperative Agreement N° DPE-2038-A-00-5071) the sum of \$ 250,000 over a two-year period for fellowships, program support and training workshops. These funds became fully dispersed earlier this year and an IDLI request for renewal of assistance is currently pending with PRE.

.In June 1986 the AID Asia Near East Bureau made available to IDLI through AMIDEAST (Cooperative Agreement N° ANE-056-A-00-6048-00) the sum of \$ 989,000 for both institutional support and fellowships. Unless renewed, the Agreement will expire on March 19, 1989.

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.AID has regularly assigned its legal officers to serve as short-term visiting instructors in IDLI courses and seminars. The purpose has been to increase the awareness and understanding of AID rules and procedures among developing country legal advisors responsible for negotiating with foreign assistance donors.

.Apart from the Cooperative Agreement addressed in this Proposal and the centrally funded PRE grant, USAID field missions have provided ad hoc support by sponsoring fellowships and workshops. Through IDLI's 28th regular program offering in June 1988, 92 course/seminar participants from 28 countries have received ad hoc fellowships from USAID field missions. USAID field mission funds have also financed three in-country workshops and one institutional "twinning" arrangement.

.On February 5, 1988, the United States joined seven other governments in becoming a signatory of the "Agreement to Establish the International Development Law Institute", which transformed IDLI from a non-governmental organization (NGO) to an international (i.e. intergovernmental) organization (IO). The Agreement imposes no legal obligation on signatories to contribute. Rather, it contemplates IDLI's continued reliance on voluntary contributions to meet costs which exceed tuition, endowment and other income. It should be noted, however, that all of the current signatories are either user or donor governments.

V. THE CASE FOR CONTINUED AID ASSISTANCE

1. AID directly benefits from IDLI activities. The Institute is a useful forum for promulgating AID rules and procedures. Representatives of the AID General Counsel's Office and USAID Regional Legal Advisors regularly serve as visiting instructors in the "Project Financing" and "Procurement" segments of the English and French language Development Lawyers Courses. On occasion, junior AID legal officers have attended IDLI seminars as participants.

2. IDLI facilitates project implementation by making developing country officials more knowledgeable, not only in AID procedures but also in the "rules of the game" for international contracting. IDLI participants become more adept in negotiating, drafting and other basic legal skills of the development lawyer - all to the advantage of donor organizations, which benefit from better host country management of scarce development funds.

3. IDLI's recent internationalization signifies international recognition of the importance of the lawyer's role in economic development. The United States Government not only was a charter signatory of the "Agreement for the Establishment of the International Development Law Institute" signed on February 5, 1988, but also became the first among Agreement signatories to notify the Italian Government as depository that its Agreement formalities have been accomplished. Given AID's continuous leadership role in IDLI's development as described above, a renewal of funding would appear only logical.

4. AID assistance has been an important catalyst in attracting contributions from more than a dozen other governments and international organizations. Australia, Japan and Switzerland are the most recent additions to the donor ranks. AID contributions have constituted a decreasing proportion of the total. While AID commitments through 1987 amounted to 29 percent of total grants, AID commitments for 1988-89 are only 16 percent of the total commitments received to date for those years. Substantial AID support remains critical, as the Institute broadens its funding base among governments, foundations and multinational cooperations.

5. The original Cooperative Agreement signed in 1986 was successful in reducing IDLI's dependence on institutional support. Although the grant amount originally projected (\$ 1,500,000) was reduced under the Graham-Rudman legislation by almost 40 percent and the U.S. dollar decreased by more than 40% during the grant period, the Institute managed to increase its reserves (restricted and unrestricted Fund Balances) by 87 percent (from \$ 1,116,927 to \$ 2,082,275) between December 1985 and December 1987.

As with the original grant, funds made available under a renewed contribution would be deployed on a first-in, first-out basis. That is, the Institute would look first to the AID grant for payment of those operational costs which would be eligible under the grant and then, to the extent necessary, to tuition revenues and other contributions. Thus the AID grant would allow the Institute to create during the grant period an increasing pool of trust fund income which would further reduce the total amount required for institutional support in the future.

6. The Cooperative Agreement has been successful in providing fellowships to participants from developing countries. A cumulative list of participants trained under the Agreement to date is attached (Annex F).

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7. IDLI is a relatively inexpensive project, with broad burden-sharing among the various donors. USAID contributions are easily monitored through IDLI reporting and Rome Embassy visits.

VI. REQUEST

On the basis of the foregoing, IDLI respectfully requests an extension of the Cooperative Agreement and supplementary funding in the total amount of \$ 1.5 million over the three year period 1989-1991 (\$ 500,000 per year) in two categories as follows:

1. General and Administrative (G&A) and Regular Program Support (\$ 1 million over three years or \$ 333,333 per year)

This amount would provide approximately nineteen (19) percent of the Institute's total budget over the three-year grant period.

The remaining budget costs would be met by tuition and workshop revenue, endowment income and other contributions by governments, international organizations, foundations and the private sector. To the extent that contributions from other donors exceed the Institute's operational requirements during the project, they would be retained in the form of income-earning trust funds, thereby reducing the Institute's dependence on donor contributions for institutional support over the long term.

2. Fellowships (\$ 500,000 over three years or \$ 167,667 per year)

This amount would provide approximately twelve (12) percent of the Institute's total fellowship requirement over the three year period.

The selection of qualified, highly-motivated participants remains indispensable to the success of IDLI's training methodology. The selection process is however constrained by the lack of regular funding sources for tuition, travel and accommodations. A three-year grant in the requested amount would fully or partially fund an average of at least three participants nominated or approved by appropriate USAID field missions to each regular program (at least 54 participants during the grant). IDLI would use such fellowship funds to finance tuition costs, and as necessary accommodations and travel. A list of participant costs is attached (Annex G). As in the original Cooperative Agreement, a fellowship utilization plan would be developed to accommodate AID needs and priorities.

ANNEX

- A. Training Program, 1989
- B. Agreement for the Establishment of the International Development Law Institute
- C. Budget, 1988-90
- D. List of Donors, 1982-1990
- E. Annual Report, 1987
- F. Cumulative List of Participants Trained under Agreement To Date
- G. Participant Costs

ANNEX A

Participants by region and country

Through December 1987
(Courses and Seminars)

Total number of participants = 557
Total number of countries = 85

Africa (South of Sahara):	362	Senegal/ <i>Sénégal</i>
<i>Afrique sub-Saharienne:</i>		Seychelles
Angola	3	Somalia/ <i>Somalie</i>
Benin/ <i>Bénin</i>	5	Sudan/ <i>Soudan</i>
Botswana	1	Swaziland
Burkina	14	Tanzania/ <i>Tanzanie</i>
Burundi	7	Togo
Cameroon/ <i>Cameroun</i>	15	Uganda/ <i>Ouganda</i>
Cape Verde/ <i>Cap Vert</i>	1	Zaire/ <i>Zaire</i>
Central African Republic/ <i>Centrafrique</i>	7	Zambia/ <i>Zambie</i>
Chad/ <i>Tchad</i>	17	Zimbabwe
Congo	17	Asia/Asie:
Côte d'Ivoire	14	China/ <i>Chine</i>
Djibouti	3	India/ <i>Inde</i>
Ethiopia/ <i>Ethiopie</i>	12	Indonesia/ <i>Indonésie</i>
Gabon	10	Japan/ <i>Japon</i>
Gambia/ <i>Gambie</i>	3	Nepal/ <i>Népal</i>
Ghana	19	Pakistan
Guinea Bissau/ <i>Guinée Bissau</i>	2	Philippines
Equatorial Guinea/ <i>Guinée Equatoriale</i>	1	Sri Lanka
Guinea/ <i>Guinée</i>	8	Thailand/ <i>Thaïlande</i>
Kenya	13	Vietnam
Lesotho	3	Middle East and North Africa: 77
Liberia/ <i>Libéria</i>	4	<i>Afrique du Nord et Moyen Orient</i>
Madagascar	13	Algeria/ <i>Algérie</i>
Malawi	4	Egypt/ <i>Egypte</i>
Mali	9	Jordan/ <i>Jordanie</i>
Mauritius <i>Ile Maurice</i>	5	Kuwait/ <i>Koweït</i>
Mauritania/ <i>Mauritanie</i>	2	Lebanon/ <i>Liban</i>
Mozambique	9	Morocco/ <i>Maroc</i>
Niger	12	Saudi Arabia/ <i>Arabie Séoudite</i>
Nigeria/ <i>Nigéria</i>	13	Tunisia/ <i>Tunisie</i>
Rwanda	7	Turkey/ <i>Turquie</i>
Sao Tome & Principe	2	

Distribution Géographique des participants

Jusqu'en Décembre 1987
(Cours et Séminaires)

Nombre Total = 557
Pays représentés = 85

13	United Arab Emirates/ <i>Emirats Arabes Unis</i>	3
1	Yemen Arab Republic/ <i>République Arabe du Yémen</i>	4
3	Europe:	12
13	France	2
2	Hungary/ <i>Hongrie</i>	2
23	Italy/ <i>Italie</i>	3
10	Poland/ <i>Pologne</i>	1
12	Switzerland/ <i>Suisse</i>	1
22	Yugoslavia/ <i>Yougoslavie</i>	3
6	North America:	3
2	<i>Amérique du Nord</i>	
69	United States/ <i>Etats-Unis</i>	3
14	Latin America and Caribbean: 34	
12	<i>Amérique Latine et Caraïbes</i>	
3	Argentina/ <i>Argentine</i>	1
1	Bahamas	1
8	Brazil/ <i>Brésil</i>	5
7	Costa Rica	2
5	Cuba	3
9	Dominican Republic/ <i>Dominicaine (Rép.)</i>	1
2	Ecuador/ <i>Equateur</i>	3
8	El Salvador/ <i>Salvador</i>	1
8	Guatemala/ <i>Guatemala</i>	1
2	Jamaica/ <i>Jamaïque</i>	2
5	Mexico/ <i>Mexique</i>	1
9	Panama	1
7	Paraguay	5
12	Peru/ <i>Pérou</i>	7
5		
28		
4		

From the outset, the Institute has attempted to spread the benefits of its programs over as wide a geographic area as possible.

In only four program years, the number of countries represented in IDLI courses and seminars has reached 85.

Seven new countries sent participants in 1987:
— Botswana — Cape Verde — El Salvador — Hungary — Indonesia — Japan — Poland

In recent months the Institute has established a parallel priority: increasing the number of participants from countries with large populations.

Depuis le début, l'Institut essaie de faire profiter de sa formation le plus grand nombre de pays possible. En seulement quatre années de cours, le nombre de pays représentés aux programmes de formation de l'IDLI s'élève à 85.

Sept nouveaux pays ont envoyé des participants en 1987:

— Botswana — Cap Vert — El Salvador — Hongrie — Indonésie — Japon — Pologne

Dernièrement l'Institut a établi une autre priorité, parallèle à la première, celle d'augmenter le nombre de participants provenant des pays ayant une importante population.

AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

OCT 21 1988

BRIEFING MEMORANDUM FOR THE DEPUTY ASSISTANT ADMINISTRATOR, ANE

FROM: ANE/TR, Barbara Turner *BT*

SUBJECT: Your Meeting on the Future Relationship Between
A.I.D. and the International Development Law
Institute (IDLI)

Date: Monday, October 24, 1988 *PD-50*
Time: 11:00 a.m.
Place: Room 3942 N.S.
Duration: 45 minutes

PARTICIPANTS: AA/PPC, Richard Bissell
AA/PRE, Christopher Russell
DAA/AFR, Walter Bollinger
AA/LAC, Frederick Schieck
GC, Howard Fry

Objective: To brief you on the background and accomplishments of IDLI and to offer recommendations on relations between A.I.D. and IDLI, given the recent request for an additional \$1.5 million in A.I.D. grant support.

Background: A.I.D. first funded IDLI in 1982 through a cooperative agreement that provided start up costs (\$500,000) associated with the establishment of a legal charter, constitution of a supervisory board, and initiation of a first-year training program. A.I.D. provided additional assistance in 1983 (\$135,397). These first 2 grants were jointly funded by Africa and the then Near East Bureaus. In June 1986 a new, three year cooperative agreement for \$989,000 was signed with AMIDEAST, which serves both as the administrator and fiduciary agent for IDLI. The agreement is fully funded and ends March 19, 1989. An Agency decision was made at that time to fund and manage this cooperative agreement through the ANE Bureau.

In addition to the ANE Bureau grants, the Private Enterprise Bureau contributed \$258,816 during FY 1987, which brings total A.I.D. funding to date to \$1,883,213. A number of other donors have also supported the IDLI program (Arab/OPEC countries, various European countries, and Canada).

IDLI regularly offers two types of training courses in Rome: The Development Lawyers Course and the International Business Transactions Seminars. To date, 32 seminars have been offered including 557 participants from 85 countries. The Institute is also developing the capability for in-country training workshops.

The ANE grant is a three-year grant that supports administrative costs (\$603,000) and 52 fellowships (\$386,000). To date, IDLI has awarded 33 fellowships, only 7 of which were awarded to ANE countries.

IDLI has made significant progress in establishing itself as an organizationally and financially viable institution. IDLI was formally established as an international organization in 1987 and has been able to attract contributions from more than a dozen other governments and international organizations. The A.I.D. financial contribution has become a decreasing proportion of IDLI's total budget: A.I.D. commitments represented 29 percent of total grants through 1987, but for 1988-89 A.I.D. support amounted to 16 percent of the total.

ANE plans to conduct an end-of-project evaluation in January 1989. The PRE Bureau carried out a brief assessment of their contribution to IDLI this past summer and found the institute's performance to be extremely successful (see attached report).

Issues and Talking Points

1. Merit of the Proposal: Based on progress reports and PRE assessment, IDLI has accomplished its stated objectives and appears to be performing a useful and needed function in the area of law and development. However, in the absence of the final evaluation results (scheduled for January), ANE does not have sufficient information to make a decision as to the merits of IDLI's proposal. Frankly, the case for continued assistance in the proposal is weak.

2. Future Funding: IDLI is requesting an additional \$1 million for administrative support and \$500,000 for scholarships. A.I.D. advised IDLI representatives previously that the FY 1987 contribution would be the final one. Therefore, unless the evaluation uncovers valid reasons why IDLI has not been able to use the time and funding we have provided to become self-sustaining, ANE should not provide any

further funding to support administrative and operating costs. Support for scholarships may merit consideration, but such support should be through the individual ANE, AFR or LAC country participant training programs.

3. ANE Role: It is clear that the Institute and its training programs which we support with the ANE grant extend well beyond the ANE region. Only 19% of all trainees came from AID assisted ANE countries. The vast majority came from Africa, but there were also a number from LAC. (A one page summary of participants is attached.) If PPC feels the program is worth continued support, it should not come from ANE financial or management resources. We have not budgeted for the program in FY 89 or 90.

Attachment: Participant List

Clearances:

ANE/TR/HR, J. Champagne (draft)
ANE/TR/HR, H. Freeman (draft)
ANE/GC, J. Silverstone (draft)

ANE/TR/HR:ALong:kh:9006F:10/21/88

Fuller

AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

Oct 19 12 15 PM '88

October 18, 1988

ANE BUREAU		
OFFICE	ACTION	INFO
AA/ANE		✓
ANE/EMS		
ANE/DP		
ANE/TR	✓ Carol w DC/ANE	
ANE/PD	Bring paper	
ANE/EA		
ANE/EGYPT		
ANE/SA		
ANE/MENA		
DUE DATE: 10/21/88		
SIGNATURE OF: <i>Fuller</i>		

MEMORANDUM

TO: AA/PPC, Richard Bissell
AA/PRE, Christopher Russell
DAA/AFR, Walter Bollinger
AA/ANE/DAA, William Fuller
AA/LAC, Frederick Schieck
GC, Howard Fry

FROM: DGC, John E. Mullen *JEM*

SUBJECT: Future Relationship Between A.I.D. and the International Development Law Institute (IDLI)

Ibrahim F.I. Shihata, Board Chairman of IDLI, has written to A.I.D. requesting guidance on how to proceed in reaffirming the relationship that has existed between A.I.D. and IDLI since its founding in 1983. The attached materials were submitted to A.I.D. in August for a meeting that was cancelled. However, they provide detailed background on IDLI and on A.I.D.'s funding and other assistance since 1983.

Rich Bissell will chair a meeting on Monday, October 24, 1988 at 11:00 a.m. in Room 3942 to discuss future A.I.D. support for IDLI. The United States was a signatory to the international agreement earlier this year that established IDLI as an International Organization. Monday's meeting is an important one. We hope you can attend.

Fuller will attend meeting. Needs paper with your views.

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