INTERNATIONAL DEVELOPMENT LAW INSTITUTE

DEVELOPMENT LAWYERS COURSE

DLC-16E

February 22-May 14, 1999
Rome, Italy

COURSE REPORT

IDLI, Via di San Sebastianello, 16 - 00187 Rome, Italy

A

TABLE OF CONTENTS

	Page
Acknowledgements	1
Introduction	2
Course Schedule Overview	3
Course Objectives	4
Course Design, Schedule and Methodology	5
Summary of Proceedings	8
Visiting Instructors	39
Participants	53
Program Management	59

B

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INTRODUCTION

What most development efforts have in common, particularly those which are part of international efforts, is that they are carried out through institutions. Institutions by their nature tend to require procedural approaches, systems and formalities. If good will is to be turned into deed, there must be firm written understandings and procedures to which institutions and the people in them can relate. Such understandings take the form of agreements, notes of understanding, contracts, exchanges of letters, regulations or even laws. These are legal "instruments" or "arrangements" which facilitate the difficult passage from policy to concrete results.

However, it has become clear that there is an element missing in the development process. Despite the enormous importance of legal arrangements, the legal dimension is recognized too late and at great cost. The international Development Law Institute (IDLI) is now working to change this situation by making available to developing countries a new breed of professional : the "development lawyer".

The Development Lawyers' Course, the centerpiece of IDLI's Training Program, is a unique and practical learning program which helps developing country lawyers upgrade the skills needed to support the efforts of the economists, managers, planners and administrators in the development process. It teaches lawyers the "rules of the game" in development assistance, international business transactions and the process of legal reform. These development lawyers are preparing themselves to be able to help translate the intentions of the development community into effective action.

Twenty-seven participants (16 men and 11 women) from 17 different countries attended IDLI's sixteenth English-language Development Lawyers Course. The participants brought a rich diversity of background and experience. Each one contributed consistently and energetically to the course and let the others profit from his or her considerable talents and experience.

The graduates of the 1999 Development Lawyers Course will now be joining other Development Lawyers already making their mark in this newly recognized field of law. We know that their talents, enthusiasm and professionalism will be reflected in their work. They have been prepared to demonstrate, on the job, how their skills and knowledge can be used to the great advantage of their countries. We wish them success.

L. Michael Hager
Director

COURSE SCHEDULE OVERVIEW - DLC-16E

		MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
	Feb.	22	23	24	25	26
1		ORIENTATION **Footer/Tshuma**			ADVISING **Loris**	
	Mar.	1	2	3	4	5
2		NEGOTIATION **Kassahun/Loris**				
	Mar.	8	9	10	11	12
3		LEGAL WRITING & DRAFTING **Sullivan**				
	Mar.	15	16	17	18	19
4		FINANCIAL ANALYSIS **Ferraro**		LEGAL RESEARCH & PLANNING **Tshuma/Paliwala**		
	Mar.	22	23	24	25	26
5		ARBITRATION/MEDIATION **Moore**				
	Mar.	29	30	31	1	2
6		ENVIRONMENT **Lee**	INTRO. TO COMM.& DEV. FIN. **Hager**	COMMERCIAL & DEVELOPMENT FINANCE **Aron/Spota/Cox**		
	Apr.	5	6	7	8	9
7		HOLIDAY	WORLD BANK BRIEFINGS **Hassan**	TESSULIA EXERCISE **Hassan/Aron/Spota**		
	Apr.	12	13	14	15	16
8		CONTRACTS FOR SERVICES **Loris**		CONTRACTS FOR CONSTRUCTION SERVICES **Jaynes**		
	Apr.	19	20	21	22	23
9		GATT/WTO **Footer**		CONTRACTS FOR GOODS **Coppenrath**		HOLIDAY
	Apr.	26	27	28	29	30
10		PUBLIC PROCUREMENT **Faria**		KADZABA EXERCISE **Tshuma/Footer**		IFAD
	May	3	4	5	6	7
11		INVESTMENT/LABOUR/ENVIRONMENT **Ocran/Mumma**				HOLIDAY
	May	10	11	12	13	14
12		HUMAN RIGHTS/ GOOD GOVERNANCE **Sardar Ali**			ACTION PLANNING & RE-ENTRY	EVALUATION CERTIFICATES

COURSE OBJECTIVES

The Development Lawyers Course was designed with several long term aims in mind. Among the most important are to improve the position of developing countries in international negotiations and to enhance the role of law and lawyers in the development process.

The course objective is a much less ambitious statement :

"At the end of the course participants will have improved, and be able to effectively apply, at least seven basic lawyer skills : advising, negotiation, drafting, analysis and planning, revising and reviewing legal documents, monitoring performance, and dispute resolution in the areas of project financing, international contracting, foreign investment, transfer of technology and privatization."

The course objective is essentially a statement of realistically achievable "behavior" desired of the successful participant. The statement of objectives in terms of desired behavior has at least two advantages. First, it provides the instructor with a precise statement of what the participants should be able to do at the end of the course. It follows that the detailed planning which goes into a given learning sequence will be more accurately targeted if the instructor knows exactly what techniques and information he has to impart to enable participants to achieve the desired performance. Second, it provides a means for the participants to know what they are expected to 'do' and a means for evaluation of their own performance and the effectiveness of the training.

Training objectives have also been developed for each learning sequence in the DLC. These sub-objectives (also stated in the form of demonstrable performance) are intended to form building blocks of either knowledge, attitudes or skills which the participants need in order to meet the overall course objective of enhanced performance.

With the above stated objective in mind, participants will be provided with an opportunity to sharpen their basic lawyering skills, and to apply and practice them in selected topical areas. Participants will also be helped to find ways to transfer these skills to other areas of legal practice and to incorporate them in their own work to improve on-the-job performance.

COURSE DESIGN, SCHEDULE AND METHODOLOGY

Design

The Development Lawyers Course (DLC) has been designed to strengthen the participants' knowledge about development lawyers' functions, their skills in performing those functions, and their attitudes toward the lawyers' role in the development process. All the learning activities within the course have been designed to help the participant perform more effectively 'on the job'.

In designing the DLC, it was decided that the overall scheme should address the following :

1. Lawyers' functions in the development process;

2. Some important contexts in which those functions are performed;

3. The application of those functions in these and other contexts.

Once this approach had been established, IDLI developed the training objectives for each part of the course.

Schedule

The first five weeks of DLC-16E were spent developing seven important skills which are, or which may be, performed by development lawyers. These skills were :

1. Advising clients;

2. Drafting and revising agreements and other documents;

3. Negotiating agreements;

4. Resolving disputes;

5. Researching and planning legal aspects of development projects and analyzing financial statements.

In the final seven weeks, the participants applied those skills in important areas of the development process. This allowed them to improve and hone their legal skills. The following areas were addressed :

1. Commercial and development finance;

2. Environmental issues;

3. Contracts for goods;

4. Contracts for construction services;

5. Contracts for services;

6. International trade in goods, services and procurement;

7. Public procurement;

8. Investment through restructuring and privatization;

9. Investment and transfer of technology;

10. Human Rights and Good Governance.

Methodology

The DLC, like all IDLI courses, is based on a "participatory methodology" of learning. In a college or university-type situation, a lecturer fills a student's 'bucket' with information, allowing them to process and digest this information as best they may in anticipation of exams. IDLI, however, seeks to provide the participants with half a glass of information and knowledge - demanding that they themselves provide the other half glass by their own participation and analysis, based on personal experience and expertise. It is only by finding answers for themselves, through challenging, questioning and analyzing various concepts, that the participants will really absorb the worth of what they have learned, and carry this knowledge with them to their work place.

The IDLI learning cycle can be outlined as follows:

objectives

have we met the objectives set? **information**

job application **discussion & analysis**

distillation & generalization of principles

The training methods used in the various stages of this cycle included:

- Specialist Presentations

'Lecturettes', panel discussions and presentations by both IDLI staff and visiting instructors.

- Simulated Negotiations, Role Playing and Case Studies.

Participants acted out the parts of lawyers, clients, engineers, contractors, suppliers, politicians, administrators and other parties in order to bring their advising,

negotiating and drafting skills to life, and to experience the interaction they may face in the workplace.

- Small Group Discussions.

These gave all the participants ample opportunity to express themselves and to savor each other's opinions in greater depth.

- Written Exercises.

The participants completed individual exercises to practice drafting and revising legal and non-legal documents.

The **training and reference materials** provided for the participants included : an IDLI commissioned book 'Negotiation for International Development' by Russell Sunshine; a five volume course handbook (containing e.g. model agreements, guidelines, sample documents and legislation, legal opinions, case studies, bibliographies and articles); and access to the IDLI library for wider background reading.

The **instruction** and **guidance** for the participants was provided both by IDLI staff, and a group of distinguished visiting instructors, all experts in their fields. (A list of these visiting instructors appears at the end of this report).

SUMMARY OF PROCEEDINGS

This Report is a chronological and substantive summary of the 1999 Development Lawyers Course. It is not intended to be a comprehensive coverage of the minutes of the discussions.

FEBRUARY 22 – 24, 1999: ORIENTATION

The Course opened with an official welcome by **Mr. L. Michael Hager**, the Director of IDLI. **Ms. Mary Footer** and **Dr. Lawrence Tshuma**, the Co-Course Managers, **Mr. William T. Loris**, IDLI Deputy Director and Head of Programs, other IDLI staff members principally involved with the course and each of the participants then introduced themselves. The second part of the morning was reserved for an administrative orientation during which **Ms. Fiamma Spinelli**, **Ms. Annie Huie**, and **Ms. Eva Bouvin** dealt with financial and accommodation information.

On the second day the participants were divided into groups to draw up a list of what they expected to learn from the course. A rapporteur for each group presented their findings to the other participants. The Course Managers, together with the participants, then combined these statements into a common inventory of what the class hoped to achieve. This inventory was written on a board at the back of the classroom. For the duration of the course it served as a reference point for the participants and for the visiting instructors, who, where possible, were encouraged to modify the course design to take any new items into account.

During the second part of the morning Ms. Fiamma Spinelli gave a 'survival' Italian language lesson. The Course Managers then proceeded to explain the training methodology of the Institute, after which the participants were further introduced to the detailed content of the course and made familiar with the structure and contents of the Development Lawyers Course.

In the afternoon and during the morning of third day, individual interviews of thirty minutes each were held with each participant to ascertain their self-evaluated level of competence and special areas of interest. Where IDLI was able to concentrate on areas of special interest to the individual participants, this was done. The results of the expectation exercise and the individual interviews served as a baseline for measuring relative progress at the end of the course.

The orientation was completed with a breakfast during the coffee-break on the fourth day during which the rest of the IDLI staff was introduced to the participants.

PART I – SKILLS

FEBRUARY 24 – 26, 1999: ADVISING

Given the inter-disciplinary setting in which lawyers work, good advising skills are critical if they are to play a positive role. For this reason, the first sequence of

instruction, led by **Mr. William Loris**, IDLI Deputy Director and Head of Programs, was devoted to helping participants develop their advising skills.

The participants were asked to identify the entities they usually advised, the issues arising for advice, and the problems they have encountered in the process. Mr. Loris explained that the object of these sessions was to develop a client-centered model for effective advising which the participants could apply in their work to overcome such difficulties. That is; a model based on the premise that the client's interests are supreme.

Ways of improving communication with clients were discussed so as to better ascertain their situation and objectives. The following necessary aspects of successful client-centered advising were identified :

1. Gathering the facts
2. Helping the client define his/her goal(s)
3. Developing options to meet goal(s)
4. Allowing the client to choose an option
5. Providing (legal) solution(s)

Mr. Loris worked with the participants on the key problem of getting enough information from the client and provided the participants with the following reference model of interviewing techniques, **RADIO DRESS** :

Recognition (and encouragement)
Active listening (maintain concentration and show interest)
Decline (questions going from the general to the specific)
Image (asking the client to picture a situation)
Open questions (avoid 'yes', 'no' or one word answers)

Direct (direct client to give you more information)
Reward (tell client that information he/she gives will help get good results)
Empathy (identify/sympathize with client)
Suggestion (suggest areas of further thought)
Seek elaboration (ask client to tell you more about the subject)

The participants had the opportunity of practising these skills in a series of role-play exercises involving hypothetical problems based on developing country situations. After each exercise, Mr. Loris led a constructive analysis of the proceedings. The participants also completed a self-assessment test to establish their preferred communication style, which taught them at the same time how to cope with people who apply other communication styles. On the last day they watched a video on interview techniques.

Finally, Mr. Loris reviewed the sessions by introducing them to the '5 Cs of Advising':

1. Consistency
2. Commitment
3. Control
4. Competence
5. Creativity

MARCH 1 – 5, 1999: NEGOTIATION

The first part of this section was led by **Dr. Yohannes Kassahun**, an Ethiopian national, who currently serves as Vice President and the Director of Legal and Regulatory Services at the Institute for Public-Private Partnerships, Washington. The participants were invited to define what negotiation meant to them (communication, between two or more parties, from which follows a change in the status quo) and what they hoped to achieve from this section.

Dr. Kassahun began by analyzing the different types of negotiation, namely negotiation at a macro-level, establishing an overall policy, and negotiation at micro-level, filling in this policy. Some role-play exercises illustrated that these types of negotiation are used both inside one's own organization and off-site.

Before, during, and also after, negotiations the lawyer plays a facilitating and pacifying role. Preparing for a negotiation usually involves:

- Identification of the overall subject
- Identification of stake-holders, their legal status and risks
- Definition of own and other parties goal(s)
  - money value/interests
  - walk-away-price
  - BATNA (Best Alternative To a Negotiated Agreement)
- Testing negotiability (acceptable or not)

The next issue discussed was the planning for negotiation. Some of the matters covered were the documents needed, the selection of the negotiation-team, the seating and setting of the negotiation and the timing and the agenda of the negotiation.

A simulation of a negotiation between the World Bank, a local Government and local constructors allowed the participants to put the above issues into practice. At the end of the exercise the participants expressed how they felt during the negotiation and how they coped with it.

Dr. Kassahun then identified the win/lose approach which is common to positional bargaining (the negotiator regards the other side as an opponent, and secures only his/her own interests) and the win/win approach known as principled negotiation (based on principles of co-ordination and transparency by which all parties could realize their maximum potential). He introduced the participants to the different styles of negotiation, namely the co-operative, soft-style and the aggressive or hard style.

Following this the participants watched a videotape which showed these different approaches and styles.

Elaborating on the win/win approach, argumentation techniques were discussed, emphasizing the importance of principled negotiation and creating options. Then the art of trading concessions was discussed: how to change the options into values. Subsequent role-play exercises allowed the participants to apply all these techniques. The last topic dealt with by Dr. Kassahun was the problem of deadlocks. He indicated the sources which could cause this problem and possible solutions to it.

Mr. William T. Loris, IDLI Deputy Director and Head of Programs, led the second part of the negotiation section. He listed various factors that might affect the outcome of a negotiation:

- Negotiation style
- Nature of the problem
- People
- Place and setting
- Importance
- Time
- Communication (both verbal and non-verbal)
- Power

Four rules were recommended in order to prepare and conduct the negotiation:

1. Aim high
2. Get the other's 'shopping list' before arguing
3. Keep the whole package in mind all the time
4. Keep searching for variables

He then concentrated on the possible effect of cultural and social differences between negotiating parties, sharing some of his personal experiences with the participants. Difficulties may arise from differences in perceptions and values and may prejudice a positive closure of a negotiation. He suggested that lawyers have to prepare themselves by analyzing, being aware and respecting all the differences they encounter, so as to avoid incomprehension and irritation on both the parties.

Mr. Loris then went over different negotiation tactics. These are the components of a strategy and help to improve it by preserving the negotiators' position. These tactics could be categorized as follows:

- Questions and answers (to clarify the agenda of the meeting)
- Silence (without responding to a question)
- Concessions to the other party
- Bargaining (exchanging)
- Threats (to change the other party's expectations)
- Dirty tricks (e.g. deception, psychological warfare, positional pressure)

Lastly, Mr. Loris discussed the closing of the negotiation. The participants were then divided into groups for a further simulation exercise on negotiation. The session concluded with an examination of all the negotiation difficulties arising from this exercise. This allowed the participants to apply the week's lessons to their concrete working situation.

MARCH 8 – 12, 1999: LEGAL WRITING & DRAFTING

This third week of the course was devoted to improving drafting skills, and was led by **Prof. Ruth Sullivan**, Professor at the Common Law Section and Co-Director of the Graduate Studies of the University of Ottowa, Canada.

Prof. Sullivan commenced by explaining and illustrating three different styles of drafting:

- The traditional common law style
- The modern style
- The plain language style.

Practical written exercises allowed the participants to compare and contrast the three different techniques used in various texts and sentences. The participants were then invited to consider which style or combination was best suited for their drafting.

Prof. Sullivan emphasized the importance of analysis before starting the actual drafting-process. Drafters have to break down the legal text and critically evaluate it. Prof. Sullivan stated that the essence of good drafting is communicating what is really meant, in short, using simple and clear language. She condemned legalese.

Prof. Sullivan then explained how to draft a sentence following a very simple structure: subject + verb + complement + adverb. These four elements formed the sentences analyzed by the participants who were invited to indicate and classify the three different kind of phrases:

- With co-ordination (introduced by: and, or, but)
- With subordination (introduced by: when, if, although, since, because)
- With relative clause (introduced by: that, which, who)

She then explained how to build sentences. Generally, sentences can be built by branching to the right or to the left. Phrases and clauses can also be embedded into the middle of a sentence. Attention was drawn to a number of features about the voice, active or passive, of the verbs. An exercise on the legislative sentence (legal subject + legal action + case) and on the verbs which often are used in legal documents, ended the first day of the segment.

The second day started with a series of written exercises to identify and correct bad sentence constructions. The use of parallel structure and tabulation was encouraged: putting selected parts of several, similarly structured, sentences into the form of a list which was embedded within the sentence. The participants then learned how to detect and correct ambiguity in drafting.

On the third day Prof. Sullivan concentrated on the use of definitions in legal documents so as to avoid repetition of certain words. She highlighted the difference between exhaustive and non-exhaustive definitions and stated that definitions should not include substantive rules nor legal terms. Several signaling devices were discussed.

She then went on to the organization of a text and gave two ground rules improving its structure and its overall readability:

- Group-like elements should be put together
- The sequence should be rationalized both among and within the groups (using either a chronological order or a conceptual order, a conventional order, an order of importance, an order of complexity etc.)

Introducing a new topic, Prof. Sullivan discussed the conventional elements of a commercial contract, which are the following:

- Title
- Table of contents (optional)
- Introduction
- Recitals (optional)
- Statement of agreement
- Definitions (optional)
- Interpretation (optional)
- Terms negotiated by the parties
- General provisions
- Signatures and dates
- Attachments (optional)

Finally, the participants were given instructions on the basis of which they were asked to draft a contract. Attention had to be paid not only to the essential elements, but also to the overall readability.

On the fourth day Prof. Sullivan emphasized that in order to achieve the right level of precision, drafting requires two skills. The first one being the ability to judge what level will best serve the client's needs. Secondly, the ability to adjust the language. Special care should be taken when using precedents. A lawyer should not blindly copy them, but be aware of its origins, its interpretive history and its operational context. Different exercises and practical examples gave the participants the opportunity to better understand the importance of the points under discussion.

During the last day Prof. Sullivan developed the final guidelines to follow when writing an opinion letter, a memorandum and a letter on an arbitration clause. Practical exercises allowed the participants to write these documents individually which were later discussed and where necessary redrafted.

MARCH 15 – 16, 1999: FINANCIAL ANALYSIS

Mr. Pasquale Ferraro, IDLI Deputy Director and Head of Administration and Finance, opened this section of the course which offers an introduction to accounting for lawyers. Essentially, he sought to equip the participants with the tools to read a balance sheet and an income statement, and the ability to analyze them in order to determine whether a financial analyst should be called in.

He started with the premise that every organization, whether profit or non-profit, needs information. The two principal categories of information are the narrative information and the numerical information of which the latter can be of monetary or statistical nature. Accounting can be defined as numerical monetary information and is usually divided in three main areas:

- Strict accounting
- Financial accounting
- Management accounting

The first area, better known as book-keeping, constitutes the recording of the monetary numerical information. The second area is the presentation of the recorded information in the form of financial statements. These statements are made for external use only, e.g. for shareholders, banks, etc. The presentation of each financial statement can vary significantly, and it will look very different depending on whether a bank offering a loan or a prospective investor is the recipient. The third area is an internal tool for use by the management of the organization. It assists them in planning and budgeting implementation, and in controlling the entity's activities.

Mr. Ferraro outlined that there are two main methods of accounting:

- The accrual system
- The cash system

The accrual accounting system records the transaction at the time when it occurs, whether or not it is paid for at that point in time. On the other side, the cash system only records the revenues as earned when the cash is paid in, and expenses only when cash is paid out. It is possible to use a mixed system.

Mr. Ferraro proceeded to outline the fundamental equation of accounting:

ASSETS = LIABILITIES + OWNERS' EQUITY

This equation shows how double entry accounting was born. Each action is recorded twice: once as an expense or outgoing in terms of cash, but it is also recorded as an asset in terms of material or equipment.

The afternoon was spent examining and analyzing a balance sheet. The items included in this document were explained. The first day ended with an exercise where the participants were invited to put the different line items in order and to calculate the working capital which is the total current assets less the total liabilities.

The second day Mr. Ferraro concentrated on the income statement, discussing each separate item. The class was shown how to create ratios from the amounts outlined and how to interpret these ratios, followed by a comparative analysis with other accounting periods and other industries. The session was closed with an exercise on an income statement which required the participants to explain the implications of the different ratios discussed.

MARCH 17, 1999: PLANNING

This one-day session was led by **Dr. Lawrence Tshuma**, IDLI Co-Course Manager, who opened the discussion with a question on what the participants understood to be involved in the concept of 'planning'. He then introduced the participants to the Logical Framework which is a tool developed for the planning, implementation, monitoring and evaluation of a project. The components of a LogFrame which are to be identified systematically and logically before starting a project are:

- Overall objective
- Project purpose
- Results
- Activities
- Objectively verifiable indicators
- Means and sources of verification
- Important assumptions

Dr. Tshuma said that planning starts with the identification of the problem, the discrepancy between what exists and what should exist. Problems usually have several aspects which individually contribute to the whole problem. The LogFrame needs to identify all these separate aspects and match them with solutions which will be the project objectives. The next stage is to decide what strategy to adopt. This analysis helps to identify the alternative ways of carrying out the objectives of the project. Based on factors as the priorities, the budget available, the likelihood of success and the time available one will decide which project strategy will be applied.

The afternoon was spent carrying out an exercise. The class was divided into groups and the participants were given a non-legal document to prepare a strategy for the reform of the legal profession of Democratia for the 21st century. Using the Logical Framework the participants analyzed the different phases of the reform process picking out systematically the elements of the project.

MARCH 18 – 19, 1999: LEGAL RESEARCH

Prof. Abdul Paliwala, Director of the Economic and Social Research Council recognized Law in Development Programme, Director of the CTI Law Technology Centre, the Law Courseware Consortium, the Electronic Law Journals Project and the School of Law, University of Warwick, led the instruction on legal research.

Taking into account the average level of computer literacy, the session was aimed at creating awareness, learning how to use basic information, learning basic research and recognizing several policy issues related to the use and availability of information.

Prof. Paliwala dealt with the first objective by indicating the different sources of legal information:

- E-mail
- Internet
- CD-rom
- World Wide Web
- Propriety on-line data-sets
- Intranet

He discussed the major differences between these sources distinguishing between plain, value-added, interconnected and interactive information. He also gave some important definitions of the terms used when working with these sources.

Dr. Paliwala then moved on to explain how to use and look for information on the Internet, CR-roms and LEXIS-NEXIS. He mentioned several applications, such as virtual conferences, discussion groups, standard forms for legal advice and interactive exercises. He pointed out that all these systems are based on the same principles. It is possible to find information if the exact Internet-address, the exact name of an article or a case is known. If unknown we can search with a key-word or even by using a broad subject. He underlined that formulating a good search using a combination of different key-words (and, or, not, etc.) is the only way to avoid wasting time because of the very large number of documents which may appear. The participants were invited to put into practice what they had learned and were asked to find information on certain topics. Dr. Paliwala assisted the participants giving them advice and practical suggestions.

Another topic dealt with was e-mail, using information technology as a source of communication. After a presentation on the basic uses of e-mail, the participants were divided into groups and placed in different parts of the IDLI-building enabling them to communicate with each other by way of e-mail. Dr. Paliwala then demonstrated the very basic principles of writing a web-page.

Finally, Dr. Paliwala draw the attention to the fact that information has become a commodity which has many implications for law and policies. Issues touched upon included:

- Information available about legislation and case-law
- Authenticity of information
- Information security (viruses, encryption, hacking)
- Abuse of information (using web-sites for pornography, terrorism, propaganda)
- Property in information
- Regulation of information flows
- Access to information
- Protection of information and privacy

MARCH 22 – 26, 1999: ARBITRATION AND MEDIATION

In the fifth week the participants were introduced to **Ms. Jean Staudt Moore,** an American lawyer and partner in the law firm of Hogan & Hartson, Washington, and a mediator and advisor on various panels and committees. She began by identifying the various types of Alternative Dispute Resolution, which she defined as a by-pass judicial resolution in civil cases:

- Negotiation
- Mediation
- Arbitration
- Special masters
- Neutral fact finders
- Summary jury trial
- Private judge and jury

She said that the use of ADR processes to resolve a wide number of commercial disputes has grown extensively and has become readily accepted and forms a large part of the modern legal system.

Ms. Moore then concentrated on arbitration. This is still a fairly formal process, with one or more arbitrators hearing the case of each party, which results either in a binding or a non-binding ruling. She discussed its advantages:

- It can be economically efficient
- The time span is shorter than a court case
- The procedure is more flexible and informal than litigation
- The parties can stipulate confidentiality
- The parties can choose language, location and governing law
- The parties can choose neutral and/or specialist arbitrators
- The parties can define the issues to be arbitrated and limit damages
- It preserves the relationship of the parties
- The success-rate is high

The participants then compared these with the drawbacks of arbitration:

- There is no appeal procedure
- Risk that the award cannot be enforced
- Risk of a run-away arbitrator
- Arbitrators tend to 'split the baby'

She made clear the difference between administered arbitration, where an established arbitrator is hired which oversees the entire procedure (e.g. the International Chamber of Commerce) and non-administered arbitration, where parties use the arbitration rules of an organization, but settle the remaining matters among themselves (e.g. UNCITRAL-rules). The latter process has the advantage of speed, flexibility and low costs. She mentioned that separate rules had been developed for certain types of disputes, such as franchising disputes.

Ms. Moore next introduced the participants to the basic elements of an arbitration clause. It is much easier and more practical to decide the procedure of resolving disputes before they arise. It can be tailored to be a specific tool catering exactly to the parties' needs, and ensuring that they have the best chance of an amicable and pleasing resolution of any future disagreements. If nothing is decided until the conflict arises, neither party will trust the other's suggestions on how to resolve it. An exercise allowed the participants to start putting into practice some of the ideas discussed. They negotiated in pairs an arbitration clause which formed a part of a contract between a shipbuilding company and a shipping company.

Ms. Moore then discussed the ICC-rules, which are considered to be the most formal. To close the discussion on arbitration, Ms. Moore gave some points of practical advice on how to choose an arbitrator: check whether there is a conflict of interests, whether the arbitrator is available, but most importantly: be creative. An mock arbitration demonstrated the importance of the choice of arbitrator, as she will largely influence the outcome of the arbitration procedure.

Moving on to mediation, Ms. Moore described the rise in popularity of this form of dispute resolution. A neutral third party acts as a facilitator for communication between the parties, getting them to engage in meaningful discussion of the problem. The process evolves through joint meetings with both parties and through private caucus. Low costs, small disruption and the preservation of valuable business relationships, are again the virtues of this process. But unlike arbitration where a decision is arrived at on the merits, mediation is consensual and gives the parties complete control. Much of the success of mediation depends on the ability to get the parties to mediate in the first place. The purpose of this process is not to establish who is right or wrong, but to reach a satisfactory resolution for all.

Ms. Moore made the class aware of some of the more oblique benefits of mediation. It creates an appropriate environment to vent emotions, or express apology. This may greatly ease the final settlement and bring about changes in perception and attitudes.

Parts of the third and fourth day were spend viewing a series of videos on mediation and the role of the mediator and upon which Ms. Moore commented. She emphasized the importance of 'giving the mediation back' to the businessmen involved. They often come up with compromises a lawyer would never dream of suggesting. It was highlighted that, through the medium of a private caucus with each party, the mediator can use sensitive, confidential information to help him make proposals to the other side, and trade-offs on various claims. He can make suggestions as if they were his own, thus relieving any sense of embarrassment between the parties.

The last part of the section on Arbitration and Mediation the participants engaged in the Prosando mediation exercise. Each team consisted of two participants acting as a lawyer for vendor or purchaser and two participants acting as the business executives. They needed to mediate a dispute about a supply contract for office equipment in South America. One party was the manufacturer and the other the distributor, charged with setting up a Latin American distribution network. After completing the exercise the class watched a training video, where professional lawyers and mediators engaged in the same activity. This was a valuable way to learn, as the participants were able to compare their own performance with that of experienced mediators.

PART II – SUBSTANCE

MARCH 29, 1999: ENVIRONMENT

This one-day session was led by **Prof. Robert Lee**, Professor of Law at the University of Wales, Cardiff and Head of Cardiff Law School. He began the session by explaining that all human activities have environmental by-products which are disposed into land, water and air. As environmental products which are released into water or air usually end up on land, he focused his presentation on contaminated land.

Prof. Lee explored various ways in which pollution costs money -credit risks; devaluation of assets; liability- and he examined ways of identifying risk. These include:

- Inspecting and investigating the history of the site and its vicinity
- Knowing the uses and processes to which it has been put to
- Considering the environmental setting. (They can do this by looking at the map to identify water courses which carry pollutants.)
- Checking for potential contamination by looking for underground tanks, boilers, stressed vegetation, strained ground and drainage patterns
- Conducting statutory inquiries by checking public records
- Talking to people who are repositories of local knowledge
- Identifying targets affected by pollution

Prof. Lee showed some examples of maps giving a clear idea of the changes occurred in the same area in different times.

Regarding the environmental setting, Prof. Lee explained that it involves the search for a pathway by which contaminants would have gone into the media. The participants, divided into groups, were then invited to analyze an environmental case study and report their findings back to the class. They were asked to identify the sources of pollution, the pathways and the targets and to compare maps from different periods.

He moved on to discuss the issue of where the risk lies and explained that this would depend on the legal system. He examined methods of minimizing risk. These include cleaning up, contract warranties and indemnities, and insurance. He then analyzed the drafting of indemnities and warranties in a contract. The vendor usually agrees to indemnify and holds harmless the purchaser against any and all losses directly arising from an identified event. Vendors prefer to give warranties rather than indemnities because the former are more specific than the latter. Ordinarily, vendors would not give warranties that go into the future. Prof. Lee told the participants that, if acting for the purchaser, they should make sure to include an awareness provision in the warranties, indicating clearly whose awareness is concerned. Warranties may relate to material compliance with national and international law. If one goes for an indemnity, he/she should make sure that there are caps as to amount and time. A creative option would be to combine caps on time and amount with the amount gradually reduced over the life of the indemnity. The indemnity is triggered by loss. Finally, Prof. Lee

alerted the participants to the fact that if one spends money to prevent damage, they cannot claim under an indemnity. The same applies to insurance policies.

MARCH 30, 1999: INTRODUCTION TO COMMERCIAL AND DEVELOPMENT FINANCE

Mr. L. Michael Hager, Director of IDLI, opened this segment with an introduction to project financing. His objectives for the day were to:

- Cite current trends in development assistance
- Identify financing sources
- Define the lawyer's role in the project cycle
- Negotiate with a financing agency representative

Mr. Hager began his presentation by emphasizing the relevance of the topic to development lawyers. He discussed the importance of early involvement in project financing negotiations and the problems lawyers have experienced in this field. Lawyers often have much to offer at every stage and they need to convince their clients to include them from the beginning of any negotiation. A mini-exercise followed: a one-to-one negotiation was simulated and the participants were negotiators and/or representatives of and on behalf of the Ministry of Finance of Xandia. This exercise gave the participants the opportunity to explore the role of the lawyer beyond the legal aspects.

Mr. Hager explained that project finance should be understood within the wider context of international cooperation as determined by the Official Development Assistance Program (ODA). The ODA is the amount of foreign aid which donor countries provide to the developing world to encourage economic advancement. The policies which regulate the ODA provisions are set up by the Development Assistance Committee (DAC), an organization which comprises all the OECD and EU member states. Mr. Hager underlined that international ODA comes principally from multilateral organizations, such as the World Bank, or bilateral organizations which refer to other governments. Aid is usually provided in the form of grants or loans.

Mr. Hager then explored the different stages of a project finance cycle. This is essentially a misnomer as the process does not come full circle, but reaches a predetermined and definite end when the project comes to fruition. The participants discussed pre-project planning, contract negotiation, implementation and termination. As negotiation time is so short, preparation is of the utmost importance. It requires identification of the kind of organization involved, the rules to follow and the individuals to contact. The participants were then given a chance to take part in a simulated negotiation with a development finance agency in which they requested a loan to build a fertilizer plant in their country, Idlandia.

To conclude, Mr. Hager emphasized the continuing role played by the lawyers during the project works in order to ensure that the terms of the contract are respected at each stage of the program.

MARCH 31 – APRIL 2, 1999: COMMERCIAL AND DEVELOPMENT FINANCE

European Investment Bank (EIB)

Mr. Gian Domenico Spota conducted a presentation on behalf of the European Investment Bank where he is a Senior Counsel. He commenced with a quick overview on the European Union itself, describing the main European Treaties, the Institutions and current issues.

He then moved on to deal with third party relations of the European Union and the lending packages available to those outside the EU. He discussed the original set-up of the Treaty of Rome where two elements could be found in the objective of association agreements: trade and aid. He outlined the allocation of funds to African, Caribbean and Pacific countries under the Lomé Convention as most recently defined by the Lomé IV Protocol. And also the policies with the Mediterranean, Asian & Latin American, Eastern European areas and the Soviet Union were discussed.

The EIB derives its legitimacy from, and was established by, the Treaty of Rome. The Bank's purpose is to finance projects, which should relate to developing the less developed regions, modernizing businesses, and the like. Although it does not offer grants or charitable aids, it engages in lending on a non-profit basis. Having a 'AAA' credit rating, it can raise capital at the lowest possible cost. The Bank is financed principally through the issuance of Euro-bonds. Their distinguishing feature is that they do not merely represent money, but are a 'bearer security': if the paper is lost, so too is the investment.

The Bank is now legally authorized to finance projects outside the EU. About 89% of its business does relate to EU countries, and outside work constitutes the remaining 11%. Lending in Latin America, Africa, Asia, the Pacific and Caribbean regions is fairly limited, but in the Mediterranean region and Central and Eastern Europe borrowing has been greatly increased. Much of the lending is for transport and telecommunications infrastructures as well as water and energy projects. With the new Title on Development Cooperation the EIB concentrates also on social development.

Mr. Spota then outlined the structure of the Bank and the distribution of its staff. He also traced the progress of a project proposal through the different levels of the Bank, from the first point of contact to the final decision by the Board of Directors. He pointed out that the following operating rules, taken from the EIB Statute of 1958, apply to every proposal to the Bank:

- The EIB lends only if no funds are available from another source on reasonable terms
- The EIB does not lend more than 50% of any project
- The EIB does not accept currency exchange risks
- The consent of the host government is required
- All loans must be secured by a guarantee or other adequate security
- The interest rate covers only funding and administrative costs

- The disbursement of funds is not tied to the purchase by the borrower of goods and services from a Member State. However, compliance with international procurement rules is required.

To end his presentation Mr. Spota examined the terms of a standard EIB loan agreement, in order to identify ways to protect the interests of the borrower during negotiations.

African Development Bank (AfDB)

Mr. George Aron is a Ugandan national and Chief Counsel and Head of Institutional Matters at the Legal Services Department of the African Development Bank (ADB). He opened his presentation by giving a historical background of the Bank which began with its establishment in 1963 in Sudan. In 1982 the agreement was amended allowing also non-African countries to become member states.

He then gave details about the organization and the management structure of the Bank. The Board of Governors is the highest policy making body. However, it is the Board of Directors who decides whether to grant a loan or not and which interest rate to apply. (The interest rate is determined by calculating the cost of borrowing plus the administrative costs plus a margin of 0.5%.) The President, the chairman of the Board of Directors, is the person with the highest competence in matters pertaining to the activities, management and administration of the Bank.

Mr. Aron proceeded to discuss the African Development Fund (ADF). It was created in 1972 to help those countries that cannot borrow from ADB at commercial rates. The Fund has a similar structure to that of the Bank. It does not have its own staff as it uses the services of the Bank to reduce expenses.

The following sources of financing were identified and discussed:

- ADB — Ordinary capital resources, including subscriptions by the member states, capital market borrowings and reserves
  Special Funds and Special Resources

- ADF — Initial subscriptions and replenishments
  Other resources, such as grants received and funds derived from operations

Mr. Aron then introduced the policies of ADB and ADF. Generally, the African Development Bank does not permit rescheduling of its debts relating to borrowing by member countries but there is a certain flexibility as regards to the private sector. The ADB and ADF primarily work on development projects, such as the construction of infrastructures (schools, roads, hospitals). He then discussed how the ADB and ADF decide whether a project is solid and whether a loan will be granted. Following the project cycle the participants where asked to identify the role of the lawyer in this process.

Finally, Mr. Aron underlined that the ADB and the ADF are fighting corruption and bad governance which are so frequent in many African countries. Both these issues have become part of the day-to-day operations because good use of resources is viable for the creation of an environment which stimulates development and investment policies.

Commercial Finance

Ms. Rebecca Cox, an associate of the London law firm of White & Case specializing in banking, asset finance and international project finance, presented this section. She began by explaining the difference between a syndicated loan and a bilateral loan. The first being an loan agreement between the borrower and a number of banks led by an agent bank often used for project financing, the latter being a two-parties loan: one borrower and one lender.

Moving on to the commercial loan agreement, Ms. Cox introduced and discussed the principle elements of this kind of international agreement:

- Definitions: to avoid repetition of terms
- Conditions precedent: to suspend lender commitments until certain arrangements have been taken
- Representations of fact: to determine fundamental facts about the borrower
- Warranties: undertakings of the borrower which form the basis for the agreement
- Qualifications as to knowledge
- Covenants: promises given by the borrower to the lender to protect the money advanced. There are four types:
  - Positive
  - Negative
  - Financial
  - Reporting

Ms. Cox then examined some key provisions which are often found in international loan agreements and are heavily negotiated:

- Events of default: These provide the lender with a right to terminate the agreement. The borrower will always try to insert a period during which he can cure the default and to exclude the termination of the agreement for defaults which are not material to the lender
- Governing law: The law governing the agreement and the jurisdiction
- Increased costs: In general, any costs on top of normal costs of lending are to be paid by the borrower, which prevents the lender's profit being touched upon
- Tax gross up: In general, it is the borrower who is responsible for the payment of taxes. The borrower will always ask to insert a provision that obliges the lender to use reasonable endeavors to recover tax credits and pass them back to the borrower.

Finally, the participants were divided into groups and were asked to advise a borrower on certain provisions in a loan agreement applying the knowledge acquired.

APRIL 6, 1999: WORLD BANK BRIEFINGS

This presentation was led by **Mr. Sharif Hassan**, Assistant General Counsel in the Legal Department of the World Bank. Mr. Sharif opened his presentation with a brief historical background of the World Bank which has been established in 1944 by the Bretton Woods Conference. The World Bank assists the developing countries in their reconstruction and development by facilitating the investment of capital for productive purposes.

He then discussed the member organizations of the World Bank which all pursue the same objectives of promoting economic growth and development:

- International Bank for Reconstruction and Development (IBRD): grants long term loans at commercial rate to member states for projects and structural adjustments
- International Finance Corporation (IFC): focuses on both development and profit granting loans to the private sector
- International Development Association (IDA): provides credits on very concessional terms to the poorest countries only
- Multilateral Investment Guarantee Agency (MIGA): a guarantee agency which insures private investment against non-commercial risks
- International Centre for the Settlement of Investment Disputes (ICSID): voluntary forum for arbitration and advice

Mr. Hassan then gave an outline of the internal structure of the World Bank:

- The Board of Governors meets only once a year
- The Board of Directors decide the Bank's policy and approve every single loan made. The Directors are 24 of whom 5 are permanent and elected by the U.S., Japan, Germany, France and the U.K.
- The Chairman of the Board of Directors is the President of the Bank

Mr. Hassan proceeded to give an overview of the Bank's resources, financing operations and the lending terms. These are different in the IBRD and the IDA even if the staff and the structure are the same. The IBRD gives assistance to developing countries as lender of last resort, to be used only if the borrower cannot obtain a commercial loan. Being a 'AAA' institution it can obtain funds at the best rates possible. It then lends at near market terms of about 7% over 15 to 20 years periods. The IDA is the soft loan window of the World Bank. It lends to the lowest income countries in the world with 35 to 40 year maturities, including a 10 year grace period.

As the African Development Bank, the World Bank applies the project cycle when deciding whether to grant a loan or a credit. Going through this cycle Mr. Hassan described the documents involved, the different forms of lending and conditionalities and gave tips on how to negotiate the best deal for one's government. To conclude Mr. Hassan discussed the Bank's policies on procurement, boycotts, fraud and corruption, and co-financing. He drew the participant's attention to the Inspection Panel to which one can direct complaints if adversely affected by non-compliance of the World Bank of its own policies.

APRIL 7 – 9, 1999: THE TESSULIA EXERCISE

The participants, at this point, were given a complex exercise to carry out enabling them to put into practice all the various skills they had learned in the first weeks of the course. The Tessulia exercise allowed the participants to put into practice their negotiation skills against those of the representatives from EIB (Mr. G.D. Spota), AfDB (Mr. G. Aron) and from the World Bank (Mr. S. Hassan). The three representatives negotiated for and on behalf of their organizations.

The exercise was based upon the negotiation of the financing arrangements for a large and complex railroad project in the hypothetical state of Tessulia. A dilapidated network was to be revitalized with the help of development funding. The participants were divided into three groups in accordance with the agency they would negotiate with. In each group, one participant was appointed Skills Monitor, to assess the participants' use of their skills and the exercise proceeded in three stages:

Stage 1. The three groups conducted an in-depth review of the pre-loan documents, which gave information on the financial and technical details of the project and an outline of the economic background. The Course Managers selected one person who became their Project Officer and then transferred to another group for the morning. The Project Officer then resumed their group and was briefed on the legal problems which had been identified as relevant to the negotiation of the project or loan agreement.

Stage 2. Each group was provided with a draft financing agreement from the financing agency they had been allocated to. These agreements had been prepared by the agencies themselves as if they had been funding the project in question. The groups reviewed these and prepared for the negotiations.

Stage 3. In the final stage, the participants negotiated the agreements with respectively Mr. Aron, Mr. Spota and Mr. Hassan.

At the end of the exercise, each group reviewed the negotiation with their negotiation partner. The participants then met in a plenary session to review collectively the exercise, along with the agencies' representatives, who commented on the negotiations. The discussion focused on the negotiation process, the performance of the three groups and the substance of the final agreements. The representatives advised the participants to be more selective in their choice of issues for negotiation, as time is always of essence. It is important to recognize which issues are negotiable and which are not, as for example most of the General Provisions of institutions such as the World Bank, the AfDB and the EIB apply. They should probe the institution one is dealing with, and its principle documentation. They should also be familiar with the fundamental technical terms and the project itself. The Skills Monitors reported back that the groups had identified the issues and had been very creative with solutions. One recurring theme was the realization of the importance of getting lawyers involved in the project early on. Dr. Tshuma ended the session by thanking the three experts and their respective organizations.

APRIL 12 – 13, 1999: CONTRACTS FOR SERVICES

Mr. William T. Loris, Deputy Director of IDLI, led the participants through the session on contracts for services. He began his presentation by defining contracts for services as contracts for the supply of services by independent contractors, distinguishing them from employer-employee and principal-agent contracts.

Unlike contracts for construction services, there are no clearly defined standard forms to be used when preparing contracts for services. They are entirely open for negotiation. Both FIDIC, the World Bank and the Ministry of Foreign Affairs/Finland have produced sample service contracts and Mr. Loris asked the participants to compare the different models. The FIDIC Consultant Model Service Agreement is written by consulting engineers and is therefore notably consultant-friendly. It provides a good checklist of the issues involved and helps us identify the views and aims of the consultant. The World Bank's sample was formulated for their borrowers and shows a more balanced approach. The sample produced by the Ministry of Foreign Affairs/Finland is a good example of a pro-client service contract.

The most difficult clause to draft in this type of contracts is undoubtedly the Terms of Reference, in other words, what the client wants its consultant to do. Whereas goods can be clearly described according to technical specifications, a consultant is asked to produce an intangible result which cannot be precisely defined. But it is imperative that the client provides himself with a framework against which to measure the final result, otherwise he cannot assess the consultant's performance. The Terms of Reference should define what is to be done but not how it should be done. This is linked to the responsibility and liability of the consultant. They should be left free to decide the best method to use. If they do not perform all their obligations with competence, diligence, efficiency or economy, they will be liable to the client.

Moving on to prices, Mr. Loris explained that prices for consultancy could be fixed on the following bases:

- Time rate contract
- Lump sum contract
- Costs + fixed fee contract

The majority of the service contracts are priced on a cost plus fee basis. It is necessary that, just before starting a negotiation, the lawyers request full information on the accounting techniques the firm usually uses. When negotiating a price, we need to be aware that we are employing a professional advisor and an intellectual service at the highest possible level, so we should be prepared to pay a fair amount for the work done.

Mr. Loris then reminded the participants of some of the skills they had practiced earlier in the course. First, the lawyers should not be involved at the negotiation point only, but should be included in the lead-up steps, too. Second, whoever comes to the negotiation with a good draft is likely to control the bargaining and the final deal.

In comparing the FIDIC and the World Bank materials, Mr. Loris discussed some of the risks for each party involved in a contract for services. These risks can be easily managed if the appropriate clauses are included in the contract, such as:

- Insurance clause
- Force Majeur clause
- Monitoring clause
- Assignment clause
- Substitution clause

Replacement and substitution are two tactics often employed by consultancy firms. The personnel provided to carry out the task are not described in the contract or the correct personnel arrive to commence the project but are later replaced by others. Mr. Loris suggested that, in order to protect the client against this risk, it is possible to include a clause requiring the client's approval, at least for the replacement or substitution of key personnel.

APRIL 14 – 16, 1999: CONTRACTS FOR CONSTRUCTION SERVICES

Mr. Gordon Jaynes, a Senior Partner at the London office of the American law firm of Whitman, Breed, Abbott & Morgan and an IDLI Board Member, led the participants through the legal and commercial aspects of international construction contracts. Mr. Jaynes introduced the class to the documents of the FIDIC, the Fédération Internationale des Ingénieurs-Conseils in Lausanne, Switzerland.

Mr. Jaynes then discussed the standard agreement approved by FIDIC under the 'Conditions of Contract for Civil Engineering Contracts', which was described as a multi-layered sandwich. The participants discussed the tender from the contractor, the drawings providing a preliminary visual description, the specification giving a verbal description, the rates/prices and the letter of acceptance from the employer to the contractor. Particular attention was given to the bill of quantities and Mr. Jaynes pointed out the principal points to remember about its contents. He also underlined the difference between direct and indirect costs and how these could affect the total costs.

Before examining specific FIDIC terms, Mr. Jaynes relayed the FIDIC philosophy: to make an effort to establish a reasonable and fair balance between the parties in relation to the allocation of risks and possibilities. The FIDIC contract would seem to favor the contractor. Mr. Jaynes explained that, through tough negotiation, allocating risk from the employer to the contractor, we will quickly discover that 'There Ain't Such Thing As A Free Lunch'! The contractor will find a way to cover the extra responsibilities.

Mr. Jaynes then analyzed the FIDIC Conditions of Contracts for Works of Civil Engineering Construction, discussing in particular:

- Time limits for the commencement and completion of the works and the possibility of extension of time (EOT)
- Suspension of works
- Penalties for late completion

- Default
- Advanced payments and advanced payment guarantee
- Retention and performance security
- Variations clause and provisional sums
- Care of works
- Insurance

Mr. Jaynes ended his presentation with a discussion of the Dispute Review Board and its characteristics. The members of the Board are experts in the type of construction and all three are approved by both the parties. They are appointed at the beginning of the project and visit the site periodically during the duration of the works and witness the progresses of the project. Their activity is very informal and they make their recommendation unanimously while on site. The recommendation is not binding, unless after a certain period of time it becomes final and binding if neither parties give notice to refer to arbitration. Mr. Jaynes pointed out that parties rarely referred to arbitration as they realize that newly involved arbitrators would are likely to give a better decision.

APRIL 19 – 20, 1999: GATT/WTO

Ms. Mary Footer, IDLI Co-Course Manager, gave a presentation to the class on the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO). She began the session by identifying what the WTO is. It is essentially the legal successor to the GATT. The organization, in general, regulates customs duties and tariffs on the trade in goods. It monitors trade policies and aims to promote competitive trade between states. It engages in the settlement of trade disputes and it acts as a forum for international multilateral negotiations on further trade liberalization.

To fill in the background to the organization, Ms. Footer explained that the General Agreement on Tariffs and Trade was signed in 1947. It promoted liberalized trade and successive rounds of multilateral trade negotiations. The first six of these did much to reduce tariff levels around the world. As a consequence there was a growth of non-tariff barriers to trade, such as subsidies, dumping, national performance requirements and national standards which were superficially created to protect health and safety but in reality were designed to restrict imports.

In 1973, the Tokyo Round took the first steps in order to discipline these new barriers and established codes to supplement GATT's basic rules on trade in products but these were voluntary and far from universally accepted. The most recent Uruguay Round, signed in April 1994, finally pushed the extension of the GATT frontiers to cover trade in services, protection of intellectual property and, to some extent, trade related investments. The WTO now integrates many Uruguay and previous GATT agreements into a single framework.

Then two short audio-visual films, produced by the WTO Secretariat in Geneva, were shown. They allowed the participants to obtain some further background information on the organization and its trade policies.

Ms. Footer then spent some time reviewing the new integrated dispute settlement mechanism under the WTO which allows for governments to bring claims. This is a process of movement from a purely political dispute settlement mechanism to a more judicial system. The first instance bodies are called panels and are composed of 3 or 5 members. There are no fixed rules which govern their procedures. Instead, these are agreed between the parties. Appeal on questions of law may be brought before the Appellate Body. The reports of these bodies are recommendatory and the final decision is taken by consensus within the Dispute Settlement Body, although in practice it usually follows their recommendations. Contrary to other international tribunals the WTO dispute settlement mechanism has explicit timeframes, provides for steps to encourage implementation and uses a variety of different methods.

Ms. Footer then outlined the principles of the trading system of the WTO which are:

- Non-discrimination
- Most Favoured Nation
- National Treatment
- Market access
- Undistorted competition
- Transparency
- Encouraging development and economic reform

Ms. Footer also explained some of the most important articles of the Agreement. The participants were then asked to interpret and apply the various GATT texts to two case studies.

Finally, Ms. Footer discussed the framework agreement called the General Agreement on Trade and Services (GATS) which was drawn up to liberalize trade in services such as financial services and telecommunications. She outlined the four modes of supply of services (cross-border; consumption abroad; commercial presence; presence of natural persons) and explained that there is a schedule of commitments for each mode of supply which lists the limitations on market access and National Treatment applicable to third parties. Once these commitments have been scheduled they will be valid as against all members.

APRIL 21 – 22, 1999: CONTRACTS FOR GOODS

Mr. Walter Coppenrath Jr., a Senior Partner of the law firm of Mahoney, Coppenrath, Jaffe & Pearson specializing in international and maritime law and having significant litigation experience in those areas. He began by examining the U.N. Convention on the International Sale of Goods. This Convention deals directly with international sales transactions and seeks to establish uniform trade law which accommodates both civil and common law traditions. Mr. Coppenrath pointed out that the Convention does not cover: title in goods; validity of the contract; product liability

and taxation. He then discussed the contract issues the Convention does deal with:

- Formation (offer and acceptance)
- Contract remedies
  - Damages
  - Specific performance
  - Right to reduce price
  - Right to avoid the contract
- Risk

Next, the participants looked at the key provisions of the Convention:

- Interpretation principles
- Revocation of the offer
- Counteroffer
- Fundamental breach
- Oral modifications
- Interest

Before moving on to the INCOTERMS, Mr. Coppenrath briefly went over the different methods of dispute resolution, distinguishing between the public method (court) and the private methods (mediation; arbitration). He emphasized the importance of regulating this matter in the contract.

In deciding how the goods are delivered, the use of INCOTERMS comes into play. These are obligations in international sales and only apply if the buyer and seller choose them. The terms used will depend on the type of contract in question. They fall into four categories according to the allocation of cost responsibility and the point when the risk of loss passes to the buyer.

Incoterms E – EXW:
Delivery is made at the premises of the seller, whose responsibility is simply to make the goods available for collection at the factory door by the buyer. Once the goods are loaded onto the buyer's vehicle risk passes to him and subsequent transportation is his own responsibility.

Incoterms F – FCA, FAS, FOB:
The seller must deliver the goods specifically packed for the export, respectively by handing them over into the charge of the carrier named by the buyer, by placing them alongside the waiting ship, or by passing the goods over the ship's rail.

Incoterms C – CFR, CIP, CIF:
Carriage is paid by the seller. CFR: the seller's obligations continue until the discharge of the ship in the port of destination. However, the risk of loss passes to the buyer from the moment the goods pass the ship's rail on loading. This is the most commonly used incoterm. CIP and CIF: these incoterms require the seller to pay not only for the carriage of the goods but also for the -minimum- insurance coverage.

Incoterms D – DES, DEQ, DDP:
The seller fulfils his delivery obligations when the goods are made available to the buyer res. on board of the ship, on the wharf or at the named place in the country of importation.

While EXW represents the minimum obligation for the seller, DDP represents the maximum obligation. Following this overview the participants were then asked to fill in a chart, indicating who bears the risk and who is responsible for payment and further duties under the different INCOTERMS.

Mr. Coppenrath then paid attention to Marine Cargo Insurance and pointed out the difference between an all risk policy (every risk except..., e.g. the Institute Cargo Clause 'A') and a listed or defined peril policy (only listed risks, e.g. the Institute Cargo Clause 'B' and 'C') . He mentioned the types of risks which an insurer will never cover and discussed the optional coverage available as a separate policy for: war; strikes; theft, pilferage and non-delivery; and malicious damage.

Mr. Coppenrath closed his presentation with an exercise in which the participants completed a chart comparing the coverage of the different Institute Cargo Clauses.

APRIL 26 – 27, 1999: PUBLIC PROCUREMENT

This section of the course was led by **Mr. José Angelo Estrella Faria**, a Legal Officer with the International Trade Branch at the United Nations Office of Legal Affairs, Vienna. He opened the topic by discussing the objectives of the procurement legislation, which are:

- The elimination of any risk of corruption
- More economy and efficiency in economic development
- Confidence of traders

The first part of the session was devoted to the main features of the UNCITRAL Model Law on Procurement of Goods, Construction and Services. Contrary to a Convention which is a rather inflexible instrument, the Model Law does not require countries to implement it using the same wording but helps countries to adapt their legislation. The Model Law applies to all procurement by procuring entities, except the procurement of military equipment and the additional types of procurement the enacting state specifies to be excluded in this Law.

Mr. Estrella Faria then explored the overall framework in which public procurement regulations work. These incorporate not only administrative law and the law of contracts, but also criminal law, law of procedure and other special laws which might affect the performance. Moving on to the selection procedure he outlined its objectives, the preparation measures to be taken and the different procurement methods. The two main methods he mentioned were tendering for the procurement of goods and construction and request for proposal (RFP) for the procurement of consultancy services. Following that he explained the pre-qualification proceedings often used for complex construction contracts in order to limit the number of bidders. He then concentrated on the evaluation criteria. Where with tendering the procuring

entity primarily selects on the basis of the tender price, with RFP the quality standards are decisive. Some practical exercises allowed the participants to interpret and apply the discussed provisions of the Model Law.

The second day of the session Mr. Estrella Faria proceeded to discuss project finance and infrastructure development. Generally speaking, there is a great demand for infrastructure construction in developing countries. Although this is normally one of the government functions, there is a shortage of government finance which has been compounded by the debt crises. Therefore, private companies are often called upon to take part in private structure development.

Mr. Estrella Faria gave an overview of all the parties involved and the contracts between those parties. He identified the different financing sources for the infrastructure products and explained in which ways the government frequently offers support. The main categories of project risks were discussed: force majeure; political risk; construction and operation risk; commercial risk and exchange rate and other financial risks. Common guidelines have been developed allocating these risks to the parties. As a ground rule the project risks are allocated to the party which is best able to assess, control and manage the risk.

Finally, Mr. Estrella Faria went over the main elements of the project agreement, after which the participants were asked to make some exercises applying the newly acquired knowledge.

APRIL 28 – 29, 1999: THE KADZABA EXERCISE

At this point of the course the participants were given a two-day exercise to put into practice and complete what they learned on contracts for goods and services and public procurement. The fictitious state of Kadzaba has started its National Development Program which also includes the Northern Region Agricultural Development Project (NORAD). This project envisages the establishment of a training and research institute, the creation of 12 district productivity stations and the improvement of several feeder roads. In order to implement the plans, the Kadzaban Government seeks public procurement of both consultancy and construction services.

The exercise was divided into two phases – the first dealing with the services aspect and the second with construction. The class was divided into four groups, two of the teams represented the Kadzaba Government and the other two represented the contractors in each phase. Each team spent some time preparing before meeting the other side to negotiate the issues set out.

Under the services section, there were two issues to be negotiated. The first related to the contractor's proposed clause on the replacement and substitution of consultants and the second dealt with a cost proposal in relation to personnel. In the construction phase, the problem related to a claim for damages by the contractor, in addition to the contracted amount and the subsequent counter-claim by the government.

The exercise required the class to revise their negotiation techniques as well as employing their new knowledge on different aspects of public procurement. After each phase, the class reconvened to review their negotiations and share their results with the other teams. The different solutions were compared and ideas exchanged. The participants received the exercise enthusiastically and put a lot of effort into its preparation.

APRIL 30, 1999: INTERNATIONAL FUND FOR AGRICULTURAL DEVELOPMENT (IFAD)

This one-day presentation was spent visiting the Legal Office of the International Fund for Agricultural Development, a United Nations specialized agency based in Rome. After a brief welcome, **Mr. Christian Codrai**, IFAD Senior Counsel, spoke about IFAD's history, mandate and vision. Unlike other international financial institutions, which have a broad range of objectives, IFAD has a very specific mandate: to combat rural hunger and poverty in developing countries.

Mr. Codrai then focused on IFAD's lending and other financing operations. IFAD has three categories of members, of which the first two are donors to IFAD:

- OECD-countries
- OPEC-countries
- Developing countries

IFAD lends - on highly concessional terms - to OPEC-countries and developing countries which are member to IFAD. As IFAD only lends to governments and only within its mandate, others might come in to finance elements falling outside the mandate. For each project IFAD will cooperate with International Financial Institutions, regional banks and bilateral donors, as its policy is not to finance whole projects. It will push the Cooperating Institutions to by-pass bureaucracy to ensure the loan will be used at the level where it is actually needed.

Mr. Codrai then moved on to IFAD's sources of funding which mainly consist of contributions (initial amount and replenishments) and investment income.

At this point, the participants met **Ms. Inger Axell**, IFAD General Counsel, who introduced the role and the work of an Office of General Counsel. Following that, she discussed IFAD's governing bodies and decision making procedures. It is the Board which decides on project and loans, which in practice is done by consensus. Finally, she elaborated on the relationship between the United Nations and IFAD. The latter is a Specialized Agency of the former.

Mr. Frank Fariello, IFAD Senior Counsel, concluded the presentation by giving a brief overview of the General Conditions for Agricultural Development Financing and of the Loan Agreement, after which a role-play exercise was carried out which allowed the participants to redraft and negotiate sample clauses of a loan agreement.

MAY 3 – 4, 1999: INVESTMENT

Prof. Tawai Mobido Ocran Professor of Law at the University of Akron in Ohio, USA, led the session on investment and sustainable development. His field of specialization is international economic law. He began by pointing out that the concept of sustainable development, although already mentioned in the UN Stockholm Declaration of 1972, was defined for the first time only in 1987 in the World Conference on Environment and Development as "Development that meets the needs of the present without compromising the ability of meeting future needs". Since then it has been used in a more systematic way. It reflects the principle of intergenerational justice which says that those who come after us should be given the same chances.

Sustainable development requires new levels of responsibility of government and industry. The United States was the first to introduce legislation incorporating the issues of environment and conservation, forcing industry to use less damaging methods for development projects. Prof. Ocran stressed the importance of international consensus and cooperation, as sustainable development often involves trans-border problems.

The issue of sustainable development also has major implications for foreign investment law. Prof. Ocran alerted the participants to the strong tension between sustainable development and foreign investment. How far does a state want to relax foreign investment law in order to create appropriate sustainable development ? Who bears the costs of sustainable development ? The tension culminated at the Rio Conventions where the developing countries claimed a 'right to development', obviously clashing with the issue of environment. The United States rejected this right, considering that development should be seen as a goal, not as a right.

The participants were then divided into 4 groups to carry out a short exercise. They were invited to comment on the investment legislation of Mexico and Ghana, focusing on the commitment to sustainable development and on the question of which model would be more likely to foster foreign investment given the national interests. A discussion followed and the participants gave some information about their national legislation in this field.

On the second day some participants who had been asked to study a case and prepare their comments had the opportunity to present what they considered to be important for the further progress of sustainable development. Matters which came up were:

- Environmental legislation needs to be as specific as possible as to allow for scrutiny (Trillium Corporation's Rio Condor Project)
- Clean environment seen as a human right on the basis of which a private person can sue (Mineral Development *v.* Save the Vaal Environment)
- The government should not abuse the discretion flowing from environmental law (Murphyores Incorporated *v.* The Commonwealth)
- Environment has a pre-eminent but not absolute position. Derogation is possible if certain national interests are involved (New Zealand Rail)

Finally, hypothetical cases were given to the participants who were divided into pairs, representing the government and a foreign investor. They considered their position in relation to a development project, negotiating on the national and international environmental requirements. Each case was then evaluated by the class. This exercise ended the presentation.

MAY 5 – 6, 1999: ENVIRONMENT AND LABOUR ISSUES

Dr. Albert Mumma, a Senior Lecturer in Environmental Law at the Faculty of Law, University of Nairobi in Kenya, led this section of the course. He began by defining the natural environment as the environment resulting from human intervention and the truly natural environment. The parts of the natural environment which are of direct utility to human society are called the natural resources. These tend to be the parts of the natural environment of which human beings are most concerned.

The participants were asked to examine why there is need for concern for the environment. The reasons given by the participants basically came down to own interests. Dr. Mumma explained that this was typically the anthropocentric approach: Human beings consider that they should protect the environment in order of their conception of importance, neglecting other environmental aspects. It is this approach which is captured in the concept of sustainable development. As rival approach Dr. Mumma identified the species centered approach. Instead of subordinating the environment to the human being this approach has as its starting point the idea that all beings have a certain utility, independent of the utility to the human society.

Dr. Mumma asked the participants to reflect on the question how one could promote environmental legislation on the basis of the species centered approach. Further questions arose, such as 'Who should speak for the environment ?' and 'What would be the interest of the person speaking for the environment ?'. Dr. Mumma draw the attention to a Filipino case decided in 1994, namely Oposa v. Factoran. Although not yet decided on the merits, it gives children the right to sue on behalf of the environment, in this case the tropical forest which was under threat of being entirely cut within a period of 25 years.

Dr. Mumma then moved to the Environmental Impact Assessment (EIA); a procedure for both gathering information about the potential impact of development on the environment and decision-making. Dr. Mumma identified all the stages in this procedure from the point of defining which proposals will fall under the EIA to the decommissioning. The participants were then divided into groups and given some questions for discussion. They reported their findings to class.

Dr. Mumma started the second part of his presentation by giving the minimum benchmarks for employment. Differentiating between core labour rights and other labour rights, he argued that core labour rights should be seen as a necessity which will at the same time help to reach other, non-core, labour rights such as minimum wage, pension rights, terms and conditions governing dismissal etc. Dr. Mumma

discussed the following core labour rights which have been identified by the International Labour Organization:

- Freedom of association
- Right to organize and bargain collectively
- Freedom from forced labour
- Non-discrimination
- Freedom from exploitative child-labour

Finally, the participants examined some further questions on the labour issues which arise in the context of sustainable development, which were then discussed in class.

MAY 10 – 12, 1999: HUMAN RIGHTS AND GOOD GOVERNANCE

Prof. Shaheen Sardar Ali is Professor of Law, University of Peshawar, Pakistan, currently Lecturer, School of Law, University of Warwick. Her teaching and research experience is mostly in International Law of Human Rights, Women's Human Rights, Children's Rights, Public International Law and Gender and the Law. She delivered the final substantive presentation of the course in which she discussed the concept of human rights and concentrated on women's and children's rights.

Prof. Ali opened with an introduction and an historical overview of evidence of emerging international human rights law. Following that she focused on the United Nations system which put human rights on the international scene. She commenced by discussing the Universal Declaration of Human Rights (UDHR) which was signed in 1948. The drawback of this document is the fact that it is a declaration, and therefore, it is not legally binding. On the other hand, it was adopted unanimously as a resolution of the UN and may be seen as reflecting principles of customary international law and *jus congens* from which no derogation is accepted. The participants were then asked to find a connection between the UDHR and their national constitutions. The exercise was intended to show that the UDHR has been implemented in many national constitutions and that may therefore be part of customary international law and parts of it may be *jus cogens*. The trend that emerged was that economic, social and cultural rights were not included in most of the constitutions considered. Participants argued that their countries were too poor to implement economic, social and cultural rights. Prof. Ali pointed out that many developing countries spent an inordinate amount on the military. They cannot therefore argue convincingly that they cannot implement economic, social and cultural rights because they are poor.

Prof. Ali then discussed the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Both Covenants entered into force in 1976, ten years after their adoption. The first reason for this delay mentioned by Prof. Ali is the fact that these documents are legally binding treaties, as opposed to the UDHR. Other factors could be the opposite views between capitalist and communist countries on the one hand and between former colonies and their colonizers on the other. The two Covenants have different implementation mechanisms which might give the impression of a hierarchy: that civil and political rights are more important than economic, social and cultural

rights. The concept of first, second and third generation rights also gives the impression of a hierarchy. Prof. Ali argued that human rights should be seen as interdependent and indivisible.

Prof. Ali then discussed regional systems for the protection of human rights and introduced the participants to the following documents:

- European Convention for the Protection of Human Rights and Fundamental Freedoms
- American Convention on Human Rights
- African Charter on Human and Peoples Rights

While all of them derive their inspiration from the UDHR, they are products of their time. Hence the European Convention which was adopted soon after the UDHR did not include economic, social and cultural rights while the American and African human rights treaties which came later included them. Prof. Ali drew the attention to the fact that the African Charter not only refers to human rights, but also to peoples rights as to express solidarity with the past problems of the African people and to emphasize both individual and collective rights. She compared and contrasted the implementation mechanisms under the three regional systems.

Prof. Ali then discussed women's rights. She analyzed developments leading up to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention itself. She pointed out that while the Convention had been ratified by most countries, it had more reservations than any other human rights treaty. Participants were asked to identify whether they countries had made reservations. It turned out that only a few countries represented had made reservations. Given that all but one of all the countries represented had ratified the Convention, participants were invited to discuss the extent to which the practical situation in their country matched the principles given in the Convention. They concluded that despite the non-discrimination provisions in the Convention, there was still *de facto* discrimination in most of the countries. Prof. Ali mentioned the implementation mechanisms as one of the possible factors. The state members are under an obligation to submit a report to a Committee which may engage the authorities in a constructive dialogue.

The final issue discussed was the UN Convention on the Rights of the Child which entered into force in 1990. The Convention has been ratified by all state except the United States and Somalia. The Convention being very much a product of its time, covers civil, political and economic, social and cultural rights, presenting them as indivisible. Prof. Ali emphasized the importance of the link between women's rights and child rights: it is not enough to give a child the 'right to life', one should also think of the mother and support her so as to enable her to give birth and bring up a healthy child.

In the last session she divided participants into groups and gave them a set of questions which required them to examine how a given set of fact situations relating to human rights violations would be resolved in their countries. Participants explained how the issues would be resolved in their countries.

MAY 12 – 13, 1999: ACTION PLANNING & RE-ENTRY

To draw the threads of the course together before closing, **Dr. Lawrence Tshuma** and **Ms. Mary Footer**, IDLI Co-Course Managers, led the participants through a series of practical exercises in order to prepare them for their return home to work and family. It was suggested that the participants should take stock of, and revise in some measure, what they had learned in the light of their work situations in order to gain the maximum benefit from the DLC course. By identifying their professional responsibilities, the class analyzed the skills they had acquired to deal with them and the ways in which they could employ them in the workplace.

The participants filled in self-assessment forms similar to those they used in the first few days, and were given another opportunity to meet with **Ms. Mary Footer**, **Dr. Lawrence Tshuma** and **Ms. Maria Sara Jijón**, Program Legal Counsel, in an individual interview to discuss their progress and development throughout the course.

MAY 14, 1999: EVALUATION AND CERTIFICATES

On the final day, the participants were invited to complete a written evaluation of the Development Lawyers Course, and to contribute their comments for improvement in either substance or presentation in the future. To close the course, **Mr. Pasquale Ferraro**, the Deputy and Acting Director of IDLI, led the certificate presentation ceremony. It was clear that on a personal, as well as on an intellectual level, the course was very successful for all the twenty-seven participants involved.

PERIODIC EVALUATIONS

Throughout the course, participants were asked to make periodic evaluations which covered the quality of visiting instructors, program content and methodology. Frequently, visiting instructors also offered helpful contributions for improvement.

IDLI will continue to make recurrent long-term evaluations of former DLC participants, to assess whether, and how, the course has made a significant and lasting effect on their job performance.

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Shaheen Sardar Ali is Professor of Law, University of Peshawar, Pakistan, currently Lecturer, School of Law, University of Warwick. She holds a PhD in International Law of Human Rights, and an LLM in International Business Law (with distinction) both from the University of Hull, England, an Advance Diploma in Human Rights from the Raoul Wallenburg Institute of Human Rights and Humanitarian Law, University of Lund, Sweden, a Masters degree in Politics (with distinction), a Bachelors degree in Law (LLB) (with distinction) and a BA in Law and Politics (with distinction) from the University of Peshawar, Pakistan. Her teaching and research experience is mostly in International Law of Human Rights, Women's Human Rights, Children's Rights, Public International Law, Islamic Law and Jurisprudence, Alternate Dispute Resolution and Gender and the Law. Professor Ali was Commonwealth Scholar at the University of Hull (1995-98), Chair of the Department of Constitutional and International Law, University of Peshawar (1992-96) and Director, Women's Study Centre at the same University. She has been consultant for the British Council, The World Bank, ILO, NORAD and Radda Barnen (Save the Children, Sweden).

Professor Ali received a number of national and international awards including Star Woman of the Year 1996 in the field of law (Pakistan), the Presidential Award (Aizaz-i-Fazeelat) in 1992 for contribution to the teaching and research in higher education Pakistan), and an honourable mention in the UNESCO Prize for the Teaching of Human Rights in 1992. She has published extensively in a number of areas including Human Rights, Islamic Law, International Law, and Gender Studies. Some of her more recent publications are: *A Comparative Study of the UN Convention on Rights of the Child, Islamic Law and Pakistan Legislation*, 1994, Peshawar: Shaheen Press; *The United Nations Convention on the Elimination of All Forms of Discrimination Against Women, Islamic Law and Laws of Pakistan: A Comparative Study*, 1995, Peshawar: Shaheen Press; "The Conceptual Foundations of Human Rights: A Comparative Perspective", 1997 European Public Law, Volume 3, Issue 2; "Is an Adult Muslim Woman *Sui Juris*? Some Reflections on the Concept of 'Consent in Marriage' without a *wali* (with particular reference to the *Saima Waheed* case), 1996, Yearbook of Islamic and Middle Eastern Law, Volume 3, *Indigenous Peoples' Issues in Pakistan: A Legal Perspective*, 1997: The World Bank, and "Women's Human Rights in Islam: Towards a Theoretical Framework" 1998, Yearbook of Islamic and Middle Eastern Law, Vol. 4.

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Mr. Aron, a Ugandan national, obtained his LLB degree from the Makerere University of Kampala in 1971 and went on to obtain his L.L.M. degree in international law in 1973 from the New York University School of Law. Mr. Aron is currently Principal Counsel and Head of Institutional Matters at the Legal Services Department of the African Development Bank. However, he has worked at the Bank for over eight years, holding various posts. Prior to joining the Bank, Mr. Aron worked for the United Nations in New York. He has also had experience in lecturing law, more specifically at the University of Lusaka in Zambia, and the University of Dar es Salaam in Tanzania. Mr. Aron has participated in various specialized short-term training courses, including *Negotiating and Structuring BOT and BOO Projects* (1997 at the International Law Institute, Washington, D.C.) and *International Financial Law* (1994 at Oxford University, U.K.).

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Mr. Coppenrath received his juris doctorate in 1978 from the University of California at Los Angeles. His B.A degree was earned at Santa Clara University in 1968. He studies at Loyola University's Program Rome Center for Liberal Arts in 1967-68 and was employed at the Rome Center from 1970 to 1972. He served in the U.S Peace Corps in Sierra Leone, West Africa from 1968 to 1970. And was admitted to a master's program at the University of London's School of Oriental and African Studies in 1972.

Over the past 18 years Mr. Coppenrath has developed an expertise in handling litigation involving complex commercial, real estate, and insurance disputes. He is a trusted advisor to individuals, businesses and, importantly, to other Attorneys who make use of his skills in the defense and prosecution of substantial matters in state and federal trial courts in California. He successfully completed a certificate training program in mediation in 1995. In order to gain a "judicial" perspective of litigation, he

has participated as a volunteer Judge Pro Team of the Los Angeles Superior Court since 1988, and as court appointed arbitrator since 1993.

Mr. Coppenrath has had an abiding interest in international and maritime law and has significant litigation experience in those areas. In the pursuit of his interest, he has been a visiting instructor with IDLI in 1984 and taught at an IDLI program in Lithuania in 1993.

Mr. Coppenrath is a member of the United States as well as the Association of Business Trial Lawyers. He is a long-standing member of both the State Bar and the American Bar Association.

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Ms. Cox holds a LL.B with honors from the Canterbury University (1988). She has experience primarily in banking, asset finance and project finance. Her work generally involves cross-border transactions, and she has recently been part of the White and Case teams advising the lenders in connection with the project financing of hotels in Russia and in the Kyrgyz Republic, the refinancing of an aluminum smelter project in the Slovak Republic. She has also advised the trustee in connection with the project financing of a petrochemical plant in Saudi Arabia and is currently advising the trustee in connection with the project financing of an aluminum smelter in Mozambique.

Ms. Cox's banking experience includes the representation of various lenders and borrowers in connection with both syndicated and bilateral loans. She has also acted for both issuers and investors in a number of secured and unsecured cross-border private placements, and has advised investors in connection with the securitization of credit and card receivables of a Central Asian airline.

Representative asset financing and leasing transactions in which Ms. Cox has been involved (or is currently involved in) include the recent securitisation of a portfolio of aircraft leases (representing the lender), the leasing of an aircraft to an African airline (representing the lessor) and the sale and purchase of an aircraft subject to a lease with a Turkish airline (representing the purchaser).

Prior to joining White & Case in 1996, Ms. Cox spent four years with an UK City firm in which she was predominately involved in aircraft financing and leasing transactions, acting for banks and lessors.

Ms. Cox was admitted as a Solicitor in England and Wales in 1998 and as a Barrister and Solicitor in New Zealand in 1988.

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José Angelo Faria is a Legal Officer with the International Trade Law Branch, United Nations Office of Legal Affairs (Vienna). He is currently responsible for the preparation of draft chapters of a legislative guide on privately financed infrastructure projects. Participates with other members of the UNCITRAL secretariat in servicing sessions of the Commission and its Working Groups.

Mr. Faria obtained his Law degree ("Bacharel em Ciências Jurídicas e Sociais") from the Federal University of Rio Grande do Sul (Porto Alegre, Brazil), in 1985, and Masters degree on European Law ("Magister des Europarechts") from the Europa Institut der Universität des Saarlandes (Saarbrücken, Germany) in 1989.

Prior to his current assignment, Mr. Faria served at the General Legal Division of the United Nations Office of Legal Affairs, in New York, from 1992-1996, where he assisted in providing legal advice on procurement matters, drafting and reviewing commercial contracts and international agreements between the United Nations and Governments or other international organizations on matters such as technical cooperation, development assistance, peace-keeping, humanitarian relief and related operations.

Before joining the United Nations, Mr. Faria worked as an attorney in Brazil, specializing in commercial and trade law matters (banking and trade contracts and instruments; mergers, liquidations, insolvency and bankruptcy proceedings).

Mr. Faria is a founding member of the Assiação Brasileira de Estudos da Integração (ABEI) and a member of the Ordem dos Advogados do Brasil. He published articles and books on international trade law matters, including *Principios, finalidades e alcance do Tratado de Assunção* (Brasilia, Ministry of External Relations, 1993) and *Voluntary Export Restraints, the GATT and the EEC Competition Law ("Selbstbeschränkungsabkommen im GATT und im EWG- Wettbewerbsrecht")* (Saarbrücken, Universität des Saarlandes, 1998).

Mr. Faria was born in Porto Alegre (Rio Grande do Sul), Brazil in 1963. He is proficient in English, French, German, Italian, Portuguese (mother tongue) and Spanish and has basic knowledge of Russian.

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Mr. Ferraro heads the Operations Department of the International Development Law Institute. His background includes extensive experience in the management of private and public sector enterprises and institutions. He holds a Bachelor of Business Administration from John Cabot University and a Master of Science of Management from Boston University. Mr. Ferraro is an Italian national.

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Ms. Footer, a British and Dutch national, gained her Doctoraal examen (J.D.) from the University of the Netherlands Antilles (1985) and a Master of Laws degree (LL.M.) in 1988 from University College London. She is a past Fellow in Public International Law at the British Institute of International & Comparative Law, London. Before joining IDLI, she was a Lecturer in Law at University College London (1988-1995) and the University of Kent at Canterbury (1995) where she taught Public International Law, International Economic Law and the External Relations Law of the European Communities.

She gained experience in Corporate Law and International Financial Law as an Associate with the firm of Smeets, Thesseling, van Bokhorst & Spigt, Curaçao, Netherlands Antilles (1984-1987). She has also worked as a legal consultant to the European Commission, Brussels (DG XIII) on European telecommunications law and policy (1989-1991) and was a research assistant to Professor Mendelson, Counsel to the Government of Qatar, in the ICJ *Case Concerning the Maritime Delimitation and Territorial Questions Between Qatar and Bahrain* (1988-1992).

Ms. Footer is a Senior Visiting Fellow in International Economic Law (since 1992) at the Centre for Commercial Law Studies, Queen Mary & Westfield College, University of London and a Member of the ILA Committee on International Trade Law (since 1993). Ms. Footer has published widely on matters concerning GATT/WTO and the external relations of the European Union.

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Mr. Hager is a co-founder of the International Development Law Institute and has served as its Director since 1983. Educated at Harvard College, Harvard Law School, and The John F. Kennedy School of Government, Harvard University, he worked as a private attorney in the United States and as instructor of law in Liberia before joining the United States Agency for International Development, where he held various legal advisory offices in Washington, D.C., Islamabad (Pakistan), New Delhi (India) and Cairo (Egypt). He has published several articles and papers on law and economic development.

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Mr. Sherif Hassan is the Assistant General Counsel in the Legal Department of the World Bank. He is also a lecturer at the Columbia Law School, where he has been conducting a Seminar on Islamic Law and Middle Eastern Institutions since 1969. He graduated from Cairo University Law School in 1961 and holds Graduate degrees in Administrative Law, Islamic Law as well as an LL.M. from Cornell University. In Egypt, he served in the Egyptian Council of State as a State Commissioner before going to the United States in 1966.

Between 1968 and 1971, he worked as an Assistant to the Chairman of the New York State Law Review Commission. In 1971, he was appointed to the World Bank Legal Department. Between 1976 and 1978, he served as General Counsel of the Saudi Fund

for Development on secondment from the World Bank. Between 1979 and 1980, he served as the Legal Procurement Advisor in the World Bank. From late 1980 until 1994, he served as Chief Counsel, first for Europe, Middle East and North Africa, and then for East Asia and Pacific. In 1994, he was promoted to his current position of Assistant General Counsel.

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Mr. Jaynes, an American national, obtained a Bachelor of Arts from Whitman College (U.S.A.), a Bachelor of Laws from the University of Washington (U.S.A.) and a Postgraduate Diploma in Law (International) from the University of London (U.C.L.).

Mr. Jaynes is Founding Chairman of the Committee on International Construction Projects of the Inter-Pacific Bar Association, and Chairman Emeritus of the Committee on International Construction Projects of the International Bar Association. He is a Founder Member of the Major Projects Association at Oxford University from 1981 to date. He has served as an Attorney in the U.S. Department of Defense from 1957 to 1964. From 1964 to 1973, Mr. Jaynes was Counsel for the Kaiser Engineers & Constructors, Inc. and was responsible for projects in Europe, the Middle East and Africa. He is listed by various international organizations as a recommended arbitrator and mediator of disputes arising under international engineering and construction contracts, and is a Founder Member and Board Member of the Dispute Review Board Foundation. His associate memberships include FIDIC and the American Society of Civil Engineers, where he serves on the International Activities Committee, and he is a Companion of the Institution of Civil Engineers of the United Kingdom. He is Editorial Advisor for the International Construction Law Review. Mr. Jaynes is a member of the Board of Directors of Rome-based intergovernmental organization International Development Law Institute.

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