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TRAINING LAWYERS FOR DEVELOPMENT: THE IDLI EXPERIENCE

L. Michael Hager*

Law is a silent partner in the development process. Economic policies find expression in statutes, regulations, international agreements and contracts. Thus the legal advisor is a problem-solver, along with other development specialists. As monitors of fair procurement procedures for development projects, lawyers can help acquire needed goods and services. As legislative draftsmen, they can help achieve meaningful law reform. As international negotiators, they can secure more equitable agreements for their countries.

A legal framework for international business is fundamental to the achievement of mutual economic gains. Yet business relationships between North and South reflect imbalances in negotiating capability as well as bargaining strength. Developing countries often fail to achieve negotiating objectives when their representatives must learn the "rules of the game" at the bargaining table—where the stakes are high and errors costly.

In international commerce, transactions may languish when a developing country is unprepared to deal with technical legal issues. Because legal resources have not been fully developed and exploited, developing countries remain at a disadvantage.

The Brandt Commission on International Development Issues observed that "developing countries, particularly the smaller and poorer ones, need to improve their bargaining strength. International bodies, said the Commission, "should be developed to strengthen the capability of developing countries to negotiate effective and durable agreements." Finally, it argued, "the terms and procedures of aid have to be improved and made more flexible."

The International Development Law Institute shares the Brandt Commission's vision. The Institute offers a constructive professional approach to the North-South dialogue.

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Through its training program, IDLI strives to increase the capability of Third World lawyers to negotiate effectively in the fields of development assistance, foreign investment and international trade. At the same time, the Institute is developing programs to assist lawyers in national law revision.

1. *The International Development Law Institute*

In November, 1980, three legal advisors to cooperation agencies then resident in Cairo, Egypt, first discussed the possibility of establishing a training center for developing country lawyers. Later, with the assistance of Dr. Ibrahim F.I. Shihata, an internationally-recognized jurist who was then Director-General of the OPEC Fund for International Development in Vienna, the idea of a development law training institute attracted wide support.

In September, 1982, with a seed money grant from the United States Agency for International Development (USAID), the "IDLI Project" began. During the next fifteen months, the Institute was legally established as an international, non-governmental organization, a Board of Directors appointed and a curriculum developed. In December, 1983, IDLI welcomed twenty-three participants from eighteen countries to its first program, a two-week seminar on "Negotiating a Petroleum Exploration and Development Agreement."

IDLI promotes the deployment of legal resources in the resolution of development issues. Its objective is to help lawyers, primarily legal advisors to government ministries, play a more constructive role in development. The Institute offers practical training in negotiation, legal drafting, international contracting procedures, financing agency rules and national law revision. Participants are mid-career legal advisors to government ministries, parastatal organizations and companies and private practitioners.

The Institute's ability to respond to practical training needs is evidenced by the wide acceptance of its initial programs. In less than five years, nearly 700 participants (twenty-one percent women) from ninety countries have attended the Institute's courses and seminars in Rome.

IDLI has received financial support from a variety of multilateral and bilateral development cooperation agencies, including the Arab Fund for Economic and Social Development, the Arab Gulf Programme for United Nations Development Organizations (AGFUND), the OPEC Fund for International Development, the World Bank, and the governments of Australia, Canada, France, Italy, Japan, Kuwait, the Netherlands, Sweden and the United States.

Believing that the private sector also benefits from having more knowledgeable negotiators on the other side of the bargaining table, IDLI has invited support from private foundations and corporations. To date, the John D. and Catherine T. MacArthur Foundation, the General Electric Foundation, the Heinz Company Foundation, the International Bar Association and Levi Strauss & Company have responded with contributions.

In order to enlarge its prospects for voluntary contributions among European and Asian donor organizations and to make it possible to conclude a headquarters agreement with the Government of Italy, IDLI is transforming its legal status from a non-governmental organization to an inter-governmental organization. On February 5, 1988, eight governments (France, Italy, the Netherlands, the Philippines, Senegal, Sudan, Tunisia and the United States) signed an agreement to establish IDLI as an international organization.

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

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

2. Training Program

The Institute's regular training program in Rome consists of two twelve-week DEVELOPMENT LAWYERS COURSE (DLC) and four INTERNATIONAL BUSINESS TRANSACTIONS (IBT) seminars—thirty-two training weeks in all. Each course and seminar is presented separately in two major languages of international negotiation, English and French.

The DLC addresses basic legal skills, practical application of those skills and the lawyer's role in the development process. Learning activities are structured to help the participants perform more effectively on the job.

The first four weeks stress development lawyers skills:

- advising governmental "clients";

- identifying legal issues in project documents;
- negotiating agreements;
- drafting legal documents;
- reviewing and revising agreements;
- monitoring the performance of legal obligations; and
- resolving disputes.

In the remaining weeks, participants apply those skills in three important subject areas:

- project financing;
- international contracting for goods and services; and
- foreign investment.

The IBT SEMINARS are designed to bridge the legal information gap in specialized topics selected each year on the basis of developing country demand. Past seminars have addressed petroleum agreements, international equipment leasing, construction contracts, dispute resolution, debt rescheduling, commercial financing for development, state-owned enterprises, barter and countertrade, technology transfer agreements and international transport of goods: contracts and insurance.

For 1989-90, the Institute has scheduled seminars on the following topics:

- investment treaties, investment contracts and joint venture agreements;
- management and consultancy contracts;
- legal aspects of new techniques for debt and financial assets; and
- legal aspects of reform, management and divestiture of public enterprises.

In addition to its regular program in Rome, IDLI designs and conducts TRAINING WORKSHOPS in developing countries upon the specific request of governments and organizations. Examples include a workshop for the State Economic Commission of the People's Republic of China on company law for draftsmen of the Chinese company law and legal advisors to public enterprise (July, 1986); and other programs in Pakistan, Cameroon and Indonesia. In November, 1988 IDLI will conduct a workshop for the training of Third World arbitrators in cooperation with the Regional Centre for International Commercial Arbitration in Cairo, Egypt.

IDLI trainers also participate as visiting instructors in programs organized by other training institutions. For example, in November, 1987 an IDLI Program Legal Counsel conducted training on "The Use of Consultants for Projects" and "Cooperation and Relationships between Buyers, Local and Foreign Consultants, Suppliers and Constructors" at

a seminar organized in Nairobi, Kenya by the Helsinki School of Economics, Programme for Development Cooperation (PRODEC). The Institute has regularly intervened in programs organized by the Italian Institute for Foreign Commerce (ICE) and the World Tourism Organization (WTO).

3. *Training Methods and Instructors*

Each IDLI course and seminar is normally limited to twenty-five participants. Convinced that "learning by doing" is more effective (and more interesting) than traditional lectures, especially in the in-service training of adults, IDLI relies heavily on simulation, particularly in its twelve-week Development Lawyers Course. It also encourages visiting instructors to use group exercises based on actual cases and contracts. Course handbooks consist almost entirely of such real-world materials.

To date, more than 300 of the world's leading experts have participated in IDLI programs as visiting instructors, many of them on a *pro bono* basis. The Institute believes it important to include in each group of instructors experts from the Third World, who articulate developing country concerns and provide role models.

IDLI's legal training staff serve both as instructors and as course managers, overseeing course preparation and follow-up and attending each session as continuous monitors.

Visiting instructors provide instruction in specific skill areas of specialized subject matter. Typically, they are private practitioners in international law firms, representatives of legal departments and financing agencies and developing countries ministries, in-house counsel to private corporations or university professors. Most of them are lawyers by training, but some are experts in related disciplines.

IDLI *raison d'être* lies in its participants. Their professional background, current responsibilities and personal motivation are fundamental to the Institute's overall objective.

From the outset, IDLI has succeeded in attracting the right participants—serious learners with a demonstrated "need to know." A recent Francophone course included legal advisors to heads of state in four countries. In 1986, an African Attorney General took leave of absence to attend the Anglophone Development Lawyers Course. Two recent seminars on "Legal Aspects of International Debt Rescheduling" attracted participants (including eight directors or assistant directors of debt) from eleven of the fifteen most indebted countries.

IDLI initially confined its participant recruitment to Africa and the Middle East. Almost every African country has been represented (two

thirds of our alumni are African) and the number of participants from the Gulf countries is expanding. Now there are increasing expressions of interest from other regions as well. IDLI has already trained legal advisors from Asia and the Pacific, Latin America and the Caribbean and now actively promotes its program worldwide.

The Institute's role extends beyond the training room. Continuing communication with participants, visiting instructors and collaborating organizations provides the international legal community with a forum for law and development. IDLI maintains contact with alumni through its biannual newsletter (the *IDLI Bulletin*) and follow-up evaluation. Alumni and visiting instructors are asked to recommend seminar topics. The legal training staff consults former participants while on missions abroad. Increasing applications for each new course and seminar and feedback from participants in the form of evaluations and letters show that our efforts are responding to a felt need.

Positive evaluations and follow-up letters confirm that in-service legal training is important for the participants and their countries. One donor completed an external evaluation of IDLI, the results of which were overwhelmingly positive. In responding to a donor questionnaire, a DLC participant wrote:

Lawyers are said to be spoilers during the negotiation stages of a project and thus find themselves being pushed aside until the negotiation stage is completed. Once there are problems concerning interpretation of the agency's procurement guidelines, then the lawyer's training and knowledge are sought. This often occurs when it is too late for the lawyer to remedy the situation. IDLI clearly puts across the importance of the lawyer's and legal advisor's participation in the initial stage of the project.

Has the Institute succeeded? IDLI's experience is perhaps too short for a definitive answer. However, the important operational and advisory positions occupied by its alumni and the high level of its visiting instructors demonstrate that the Institute, so far, is drawing the right participants and experts.

The bottom line seems to be that IDLI training works: It enhances individual job performance, helps developing countries get better deals in international contracts and provides practical insights for national law reform. Thus it may contribute, at least in a modest way, to the establishment of a new global order.