

**INTERNATIONAL COLLOQUIUM ON PPP's
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**Existing texts and guidance on PPPs at
the international level – do they need
to be modernized and harmonized?**

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PURPOSE

We are not reinventing the wheel.

We experienced some cases showing why issues raised should lead to the frame work convention and its governing institution.

- Purpose: use existing models for generating a plea for a model, and its governing jurisdiction. I.e., reinforce and harmonize the existing arbitration rules. (Ex.: the general FIDIC contract framework, etc.)
- Innovation: launching the International Court of Justice for Public and Private Partnerships (ICJPPP's), with a specific budget. Prior that, the most important stage is "building a Model Convention for PPP (MCPPP)", under the UNCITRAL.
- The MCPPP will operate like the International Court of Justice (ICJ) for assisting both parties during PPPs negotiations.
 - Keeping in mind that the goals of the private sector are NOT the goals of the public sector.
 - An MCPPP should be a guiding document leading to legal text.

ABSTRACT

Poverty of the poor is permanent danger to the rich.

- PPPs, a key element for progress and job creation.
- Building rules and provisions pertaining to PPPs are complicated, lengthy, and costly.
- LDC's have no legal instruments to protect themselves against possible abuses.
- Most African countries have no model laws or well-articulated texts pertaining to a particular PPPs project.
- This paper recommends the standardization of applicable laws for PPP's, as a full part of the MDG's.
- We need an international arbitration court of PPP's where the balance should be 50-50 between north and south. Arbitrators should be members of our TOS.

REASONS

- An intricate structure where some organizations have almost the same mission statement.
- Unemployment is an international concern.
- The "continuing financial crisis", i.e. unethical business practices still in force ("North to South".)
- Must to speak and understand the same language and concepts.
 - Specialists from LDC's rebuff statements about "Aid" because of false and obsolete premises.
 - We should redefine "Globalization". Etc.
- Arbitration about PPPs needs more legitimacy, and should integrating human rights.

INTERNATIONAL CONFERENCES ON PPPs

“The fox knows many things, the hedgehog knows one big thing”, Isaiah Berlin.

Many international conferences about jurisdictions governing treaties, agreements between parties:

- 1965-1966: The International Centre for Settlement of Investment Disputes (ICSID) with the IBRD (WB).
- 1992: The Rio Conference reinforcing the Kyoto Protocol (article 10, §c).
- 1994: The Marrakesh Agreement.
- 2006: The Trade-Related Aspects of Intellectual Property Rights.
- 2008: The Conference of Poznan (UNFCCC). Etc.
Etc.

EVOLUTION (source: European Community webpages.)

- 2008:** Rules applicable to Institutionalized Public-Private Partnerships (IPPP) (2008/c91/02 .) But no specific rules governing the creation of an IPPP law.
- **2006:** Planning an in-depth analysis of the impacts of a legislative initiative on concessions.
- **2005:** law on public procurement and concessions [COM(2005) 569 final. The focus on “dialogue”, no new rules, no new legal text.
- **2004:** The Green Paper on PPPs and Community law on public contracts and concessions (COM(2004) 327) – only for trans-European networks.
- **2000** The EC Treaty principles applicable to the award of concessions. Still need to provide legal certainty!

HURDLES WITH PPPS

- International meetings are extremely expensive and further erode the credibility and legitimacy of the international organizations concerned.
- How many have achieved real outcomes?
- How about the skeptical of what was promised and of what was achieved?
- Why do such programs not work as expected?
- Why are the intellectual property rights, copy rights, conventions, and others rules still under fire?
- Concerns from the Civil society.

DIRECT IMPACTS

- Enhancing ethics and credibility.
- Visibility in social and economic progress.
- Cost saving.
- Reinvigorate broken promises by involving rural women and cooperatives, and the Diaspora.
- Experts from the Diaspora are effective and less expensive than the expatriates.

CHARACTERISTICS OF PPPs

PPPs are characterized by:

- Duration of the relationship between partners;
- Method of funding the project, role of the partners, distribution of risks.
- The Green Paper (GP) initiative (art. 43-49): encompass transparency, equality of treatment, proportionality and mutual recognition.
- Again, no specific legal framework for PPPs at European level.

CONCLUSION

Harmonizing the laws, building models about new paradigms will shift the whole system and move it to a new dimension with new perspectives. A robust international legal entity will be the safeguard and the cornerstone for PPP's, the engine for financing projects. "Building a Model Convention for PPPs" will make a big difference. This is the first step prior launching the International Court of Justice for PPPs. Prof. Joel P. Trachtman believes there are economists who think like a hedgehog and those who resemble the fox. Some are hedgehogs. "Aid" must be alleviated from the international compendium. Time has come to put together a team of doers, facilitators, and governments for establishing a new era of PPP's. Such a combination of positive factors and synergy impacts creativity and innovation, and will result in job creation.

Thanks for your time and your consideration.