Open Discussion on a Framework for Economic Assessment of the Protocols

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Open Discussion on a Framework for Economic Assessment of the Protocols

The fifth Cape Town Convention Academic Project Conference was held 13–14 September 2016. On 13 September, an open discussion on a framework for economic assessment of the protocols was held. Jeffrey Wool moderated the session. The presenters discussed the following topics with comments and questions from the audience:

- Background on the role of economic assessment in historical international commercial law reform
- Discussion of past economic assessments of the Cape Town Convention and recent developments with data from international rating agencies
- A general formula for calculating economic benefit was presented. The formula, Economic Benefit = [Normative benefits (better rule) + Non-Normative benefits (international rule)] – Z (cost of transitioning to new rule), was discussed as were difficulties applying it, particularly with regards to availability of data
- The effect of treaty implementation on economic benefits
- Factors affecting treaty compliance and the effect treaty compliance has on economic benefits
- The empirical aspects of economic assessment and potential sources of data

The slides from the session are reproduced.
Open Discussion on a Framework for Economic Assessment of the Protocols

Moderator: Jeffrey Wool (Universities of Washington and Oxford)

13-14 September 2016

Content

- Background
- Outline of economic assessment-related developments from project inception
- Conceptual framework for assessment of economic benefits
- Some points on elements of that conceptual framework, as applied
- Empirical aspects, data, proof, and issues
Background

- Drivers for international commercial law reform
  - Historical development
  - Presently: what is said, what is fundamental, and what impacts ratification

- Role of economic benefits and economic assessment in international commercial law reform
  - The audience – lawyers, economists, and governmental
  - Data re future changes in law -- timing and causation issues (will revisit below)
  - Modelling and market conditions [first thoughts]

Outline of economic assessment-related developments from project inception

- Wording in, responses to, and conclusions of, the project inception questionnaire (prior to 1992)

- AWG’s initial letters to UNIDROIT, statement of principles, and criteria for supporting the effort (1994)

- Sanders and Walters economic impact assessment (1997)
  - Conclusions
  - Conditioned on the text reflecting the ‘asset-based financing principles’

- Eximbank decision to provide 33% reduction (CTC discount) on otherwise applicable fee (prior to entry into force (2006), 2003)

- OECD’s Aircraft Sector Understanding (ASU) permits a (smaller though on higher fees and more complex) CTC discount for large aircraft (2007)
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Outline of economic assessment-related developments from project inception

- First country-specific economic impact assessment (Linetsky, UK ratification (2010))

- ASU permits across the board 10% discount on higher fees (2011)
  - Similar to points above, with ‘qualifying declarations’, and, going-forward, with a required ‘questionnaire’ confirming inter alia the primacy of the CTC

- Wool articles on economic benefits (treaty design, 2012), implementation (with Jonovic, 2014), and compliance (2015)

- Development of international rating agencies criteria taking into account CTC (2010 ~ present)

- First CTC EETC (Doric {Emirates}, 2012+2013); Virgin Australia (2013); Air Canada 2013 + 2015); THY (2015); LATAM (2015)

Conceptual framework for assessment of economic benefits

- See next slide – general formula being developed under Oxford/UNIDROIT economic assessment of law reform project
Economic Assessment of International Commercial Law Reform

General Formula in respect of Economic Benefit

\[ \text{Economic \ Benefit} = (N_{\text{normative rule}} + N_{\text{non-normative rule}}) - Z \]

- Risk reduction
- Applicability to transactions
- Compliance perceived/actual
- Transaction and litigation costs absent uniform harmonised rule

DATA

Fundamental Policy Issues

1. Are there other means to achieve EB (repeat above and compare)
2. How are EB to be weight against the retention of current law (a broader cost-benefit analysis)
3. What are the context specific limitations on quantification

Some points on elements of that conceptual framework, as applied

- Implementation – see next slide and AWG national summary of national implementation (www.awg.aero)
- Relationship between legal and political risk – see second and third charts below
- Data-related issues (availability, causation, variables, and disparities; and timing of)
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CTC – declarations and implementation

<table>
<thead>
<tr>
<th>Eligible for OECD Discount</th>
<th>Awaiting OECD review</th>
<th>Qualifying declarations not adopted</th>
<th>Qualifying declarations, but implementation issues</th>
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This is an AWO chart and is used herein solely for discussion purposes

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CTC Compliance Assessment Framework

Presumption of Compliance

Commercial Market

Variable

Export Credit

Political Risk Continuum

High

Medium

Low

Strengthening

infrastructure

Compliance

(4) Other measures – country specific

(5) Other measures – country generally

Notes

1 Compliance presumption: The presumption of compliance is that the CTC is operational, and if other issues, given the (i) AGU mechanism (effectively a collective enforcement mechanism), and (ii) declaration, it cannot be considered a failure of the CTC mechanism (or of Compliance).

2 Commercial market: Notwithstanding the AGU mechanism, if the CTC is operational, the presumption of compliance is no greater than the presumption that the CTC is operational.

3 Country-specific measures: Notwithstanding the presumption of compliance, if the AGU mechanism is not considered to be operational, the presumption of compliance is no greater than the presumption that the CTC is operational.

4 Other measures: Notwithstanding the presumption of compliance, if the AGU mechanism is not considered to be operational, the presumption of compliance is no greater than the presumption that the CTC is operational.

5 Other measures: Notwithstanding the presumption of compliance, if the AGU mechanism is not considered to be operational, the presumption of compliance is no greater than the presumption that the CTC is operational.

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Empirical aspects, data, proof, and issues

- Analysis of capital market transactions
- Banks’ internal modelling - Basel rules
- Leasing – different factors and effects of CTC compared with banking and capital market transactions
- Modelling versus market conditions [further thoughts]
- The important role of ex post assessments (e.g., compare same transaction, with same borrower, pre-and post CTC [all other factors equal]