

Theoretical framework for international and regional unification of the public-private partnership legislation through model laws

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01 December 2023

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Question of the Century

Do people of various nations and cultures who trade with each other share “universal” values, and would therefore accept “uniform” or at least “harmonised” commercial laws?

Questions of the Decade

- Is the current trend towards trade fragmentation and regionalism is only a temporary phenomenon?
- Will globalisation and, consequently, the international unification of commercial law, eventually come back into fashion?

The Legal Problem

- The problem of global and regional unification and harmonisation of national laws on public-private partnership (“PPP”) by means of model laws is an ideal case study.
- Proposed legal research can help to answer above mentioned questions of a century and of a decade.

The Degree of Scientific Development of the Problem

- There is a noticeable scarcity in the legal literature of critical discussion of texts of adopted model laws on PPP.
- It shall not be assumed that “a text of law is good simply because it was adopted by an international organization and it is labeled as a text of unification of law” (Bergsten, 1989).

Questions To Be Answered

- Why look for harmonisation of the PPP legislation?
- Whether international unification or just regional harmonisation of PPP legislation is the objective?
- Why model law is the optimal legal instrument for international and regional unification of the PPP legislation?
- How to assess the effectiveness of a model PPP law?

Why is harmonisation of the PPP legislation needed?

- Helps to address the problem of “fake” PPPs.
- Helps to enable so-called “cross-border PPPs”.
- Helps to revive China’s “Belt and Road Initiative” (BRI).
- Lack of a universal model PPP law – missed opportunity to help countries achieve Agenda 2030 and the Sustainable Development Goals (SDGs).

Why is International Unification of the PPP Legislation Possible?

- PPP is, arguably, no longer merely a generic term, but a *sui generis* legal concept of international commercial law.
- The emergence of a common understanding of the PPP as a phenomenon in legal scholarship has provided the opportunity for organisations such as UNCITRAL, UNECE, CIS, and EBRD to begin work on developing universal and regional model laws on PPP.

Brief History

- UNCITRAL tried but failed for various reasons to push forward the idea of a universal model PPP law in 2012-2014.
- In 2019 UNCITRAL adopted Model Legislative Provisions on PPPs – is it merely a tactic to achieve in essence the same goal (i.e. a model law on PPP)?

Global and Regional Model PPP Laws

- CIS Model PPP Law (2014) - the only regional model law on PPP that has so far been adopted.
- UNCITRAL Model Legislative Provisions on PPPs (2019) and UNECE/EBRD Model PPP Law (2022) – which of them, if any, shall be recognised as a universal model PPP law?
- Lack of coordination and cooperation among international organisations?

First Criterion - the Uniformity

- To assess effectiveness of a model PPP law I shall first test the achievement of *uniformity* by existing model laws on PPPs by analysing how the legislators and courts have implemented (*textual uniformity*) and applied (*applied uniformity*) these model laws on PPP.

Second Criterion - TWAAIL and Legal Personalism

- Secondly, to evaluate whether legal norms of existing model PPP laws meet my standards of a legal scholar from the Global South of a fair and just “natural PPP law”, based on the ideas of so-called legal universalism and legal individualism.
- I shall also draw on the so-called Third World Approaches to International Law (“TWAAIL”) as my interpretative lens.

How and Why?

- My goal is to check whether provisions of existing model PPP laws represent "ideal" legal rules related to PPPs, i.e. truly universal PPP model law shall constitute a “natural PPP law”.
- Law has a strong moral foundation and, therefore, economic efficiency should not be used as the criterion for assessing or identifying an “ideal” legal rule – e.g., PPPs for SDGs.
- Comparative law vs. Law & Economics.

Questions for Further Research

- How effective the existing model PPP laws are for the purposes of unification and modernisation of the PPP legislation on global and regional levels?
- Whether development of a new universal model PPP law under the auspices of UNCITRAL or UNIDROIT is still needed?

**ANY
QUESTIONS?**

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