

Institution: University of Warwick		
Unit of Assessment: C18: Law		
Title of case study: Secured Transactions: International Standards and Domestic Law Reforms to Foster Inclusive and Sustainable Access to Credit		
Period when the underpinning research was undertaken: 2014 - 2018		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s): Giuliano G. Castellano	Role(s) (e.g. job title): Assistant/Associate Professor	Period(s) employed by submitting HEI: 1 September 2014 to 31 August 2018
Period when the claimed impact occurred: 1 January 2015 to 31 December 2020		
Is this case study continued from a case study submitted in 2014? N		
<p>1. Summary of the impact (indicative maximum 100 words)</p> <p>Giuliano Castellano's research has shaped an international reform agenda in the field of secured transactions that directly addresses problems with access to credit and financial inclusion. This is of critical importance in developing economies and, particularly, for micro, small and medium sized enterprises (MSMEs). Castellano's work has been central to the development of both the international legal standards of the United Nations Commission on International Trade Law (UNCITRAL) and global policies enacted by the World Bank. The United Nations (UN) General Assembly has highlighted the importance of these efforts which can guide domestic law reforms in virtually any jurisdiction and have become integral to law and policy reforms in at least 10 countries. Available evidence suggests this has led to many billions of dollars in credit for MSMEs.</p>		
<p>2. Underpinning research (indicative maximum 500 words)</p> <p>From 2014 to 2018, Castellano produced a body of work in the field of secured transactions law which directly addresses problems concerning access to credit. Insufficient access to credit is among the most significant limitations to private sector growth, particularly among MSMEs. It hampers job creation and fuels social inequalities in many countries, particularly in developing and emerging economies. More than half of the private companies in emerging economies have no access to credit (5.3). Addressing this issue has been identified as a priority to achieve the UN Sustainable Development Agenda aimed to combat poverty (5.1).</p> <p>Castellano's research has championed the facilitation and promotion of stable and sustainable access to credit and financial inclusion, through the reform of laws relating to secured transactions (3.1-3.6). Modern secured transactions allow MSMEs to access new capital by offering movable assets (such as machinery or equipment) to creditors as collateral. While debtors can still use the collateral, and profit from it, secured creditors can dispose of the collateral to satisfy the debt owed to them, with priority over other creditors, in the event that debtors are unable to pay. However, banks are usually unwilling to lend against movable assets without a modern secured transactions law. As a result, many MSMEs, particularly in developing and emerging economies, remain starved of capital.</p> <p>Castellano's research has demonstrated how inclusive access to credit is increased by reforming publicity rules and registrations systems so that they are flexible, transparent, and less formal than traditional national models (3.6). He first identified key problems with the implementation at the domestic level of previous international standards developed to promote</p>		

secured transactions (3.6). He showed that such international standards are likely to clash with pre-existing, domestically defined contract law and property law rules that are deeply rooted in domestic legal and political traditions, making reform agendas very difficult to implement (3.6). He was the first scholar to identify a novel approach to address this issue. Specifically, he demonstrated how reforming publicity rules in relation to secured transactions could avoid clashes with domestic legal rules and regulatory standards while also allowing a broad range of movable assets to be taken as collateral (3.4, 3.6). He has therefore highlighted the importance of publicity rules and registration standards in the development of international registration systems, in particular those developed by UNCITRAL (3.4, 3.6).

A second and related strand of Castellano's research has explored problems in lack of coordination between (1) secured transactions law, aimed at increasing access to credit, and (2) rules developed by the Basel Committee on Banking Supervision (BCBS) to ensure the stability of banks and of the banking system, particularly important since the 2008 financial crisis. This research isolates, for the first time in the literature, conflicts between secured transactions law and capital requirements for banks (3.1-3.3). Castellano was first author in all of these publications, writing with Marek Dubovec, the Executive Director of NatLaw, who contributed with his practical knowledge and direct experience in various jurisdictions. Castellano demonstrates that without coordination between secured transaction law and capital requirements for banks, both access to credit and financial stability policies will be seriously impaired (3.2). From an access to credit perspective, without coordination, lenders will be less likely to agree loans secured by movable assets, creating particular problems for small and vulnerable creditors, as identified above. From a stability perspective, an unconstrained extension of credit may trigger grave consequences potentially compromising public finances.

Castellano proposes new and specific solutions to address these problems both at the international and domestic level (3.1, 3.3). At the international level, he argues that UNCITRAL should address this issue and should promote institutional coordination and dialogue with BCBS (3.1, 3.3). At the domestic level, he proposes a multi-part regulatory strategy for law reformers so that banks are compliant with capital requirements while they are encouraged to take as collateral, assets that are commonly available to MSMEs (3.1, 3.3).

3. References to the research (indicative maximum of six references)

- 3.1 GG Castellano & M Dubovec (2018a), 'Credit Creation: Reconciling Legal and Regulatory Incentives', *Law & Contemporary Problems*.
- 3.2 GG Castellano & M Dubovec (2018b), 'Global Regulatory Standards and Secured Transactions Law Reforms: At the Crossroad between Access to Credit and Financial Stability', *Fordham International Law Journal*.
- 3.3 Castellano & Dubovec (2017), 'Bridging the Gap: The Regulatory Dimension of Secured Transactions Law Reforms', *Uniform Law Review*.
- 3.4 GG Castellano (2017), 'Reverse Engineering the Law: Reforming Secured Transactions Law in Italy', in S Bazinas and NO Askeli, *International and Comparative Secured Transactions Law*, (Oxford: Hart Pub).
- 3.5 GG Castellano (2016), 'The New Italian Law for Non-possessory Pledges: A Critical Assessment', *Butterworths Journal of International Banking and Financial Law*, 542.
- 3.6 GG Castellano (2015), 'Reforming Non-Possessory Secured Transaction Laws: A New Strategy?', 78(4), *The Modern Law Review*, 611.

3.1, 3.2, 3.3, 3.5 and 3.6 are all published in leading peer reviewed international journals. **3.4** is published in an edited collection with many of the leading academics in the field of secured transactions law.

4. Details of the impact (indicative maximum 750 words)

Shaping International Rules on Secured Transactions

Castellano's research has shaped the UN's rules on secured transactions, thereby providing an international model for countries to adopt that the UN General Assembly has stated "is likely to increase access to affordable secured credit and thus promote economic growth, sustainable development, the rule of law and financial inclusion, as well as assist in combating poverty" (**5.1, p.2**). The way in which this was achieved is set out below.

Castellano was appointed in 2010 by the Ministry of Foreign Affairs of Italy as a Legal Expert for the Italian delegation at the UNCITRAL Working Group Six (WG –VI) (Security Interests) "in recognition of his expertise in comparative financial law and regulatory governance" (**5.2a**). UNCITRAL is one of the core UN legal bodies. It is structured in Working Groups which elaborate legal instruments, such as Legislative Guides, Model Laws, and Conventions. It is through this process that UNCITRAL promotes the modernisation and harmonisation of international trade law worldwide.

WG-VI has produced a Model Law on Secured Transactions (2016) which represents a template for adoption by domestic law reformers. This is accompanied by a Guide to Enactment (2017) which illustrates and explains the policy choices underlying the Model Law, thus promoting its understanding and implementation. Finally, in 2019, WG-VI has produced a Practice Guide to the Model Law on Secured Transactions (Practice Guide) which is directed to the final users of the Model Law, such as lenders, and their lawyers, judges, insolvency administrators, and domestic authorities regulating and supervising financial institutions.

Within WG-VI, Castellano's publications (in particular **3.4** and **3.6**) have been "the point of reference for all matters concerning publicity rules and legal reform strategies to foster access to credit to promote economic growth." (**5.2a**). As a result, his research has been "fundamental for shaping UNCITRAL texts and has been recognized by numerous Delegations within WG-VI" (**5.2a**). More specifically, Castellano's research findings on the need for publicity rules and registration mechanisms with a minimum level of formalities in relation to secured transactions (in particular **3.6**) shaped the policy choices advanced by a number of delegations including Spain and Italy (**5.2 a-c**).

These positions were ultimately adopted by WG-VI and are now reflected in the Model Registry Provisions contained in Chapter IV of the Model Law and the Guide on Enactment of the Model Law (2017) (**5.2a** and **5.2c**). Overall, in relation to these issues, his research "had a decisive influence on ... creating consensus within the WG-VI", which allowed the rules and associated guidance in relation to publicity rules to be produced (**5.2a, 5.2b**).

This international model on publicity rules and registration mechanisms for secured transactions has stimulated reform efforts in many countries across the globe, directly and through integration into guidance produced by the World Bank. Within its broader mandate of combatting poverty, the World Bank provides assistance to governments for the reform of domestic secured transactions laws. To assist in this endeavour, it produces a 'Knowledge Guide' which is its key guidance to World Bank staff, donor institutions, government officials and other practitioners on the objectives and implementation of secured transactions reform (**5.3**). In the Knowledge Guide, the UNCITRAL Model Law is the key point of reference for secured transactions law reforms, given that "[t]he conceptual basis of the UNCITRAL Model Law is such that it can accommodate any legal system" (**5.3, p.42**). For this reason, the World Bank identifies the UNCITRAL Model Law and Legislative Guide as 2 of the 4 international legal instruments and guidelines that "should be used when advising governments on secured transactions reforms." (**5.3, p.49**). With

142 active World Bank projects in more than 80 countries across 6 continents, this guidance is now having impacts on many legal reform processes around the world (5.4).

While it is currently impossible to track all the countries who have implemented this reform agenda, it is possible to identify 10 countries which have been directly influenced. Jamaica, Jordan, Kenya, Tunisia, and Uzbekistan have reformed their secured transactions laws by implementing the UNCITRAL Model Law. (5.5, 5.3). Other jurisdictions – including Brunei Darussalam, the Philippines, Tunisia, Zambia, and Zimbabwe – have adopted reforms or embarked on reform processes that have been largely inspired by the UNCITRAL documents (5.5, 5.3). Alignment to UNCITRAL standards is, thus, fundamental to reform processes in a variety of jurisdictions.

The impact of UNCITRAL documents on domestic legal reforms to promote inclusive access to credit extends far beyond the mere transposition of legal rules. For instance, in Vietnam, reforms which have been progressively implemented bringing the country closer to the legal framework devised by UNCITRAL, have created access to credit worth about USD 90,000,000,000 for nearly 1,000,000 SMEs (5.4). While the effect of reforms in other countries has not yet been quantified, it is reasonable to assume that their effects will be on a similar scale.

Ensuring Policy Coherence between Secured Transactions and Capital Requirements for Banking

Castellano's research on the problems in lack of coordination between secured transactions law and capital requirements of banks (3.1-3.3) has "shaped the thinking" of UNCITRAL, "thus influencing [its] future agenda" (5.2b), with important consequences for ensuring future coherence between international policy frameworks on access to credit and financial stability.

Castellano first proposed that UNCITRAL examine the coordination of secured transactions laws with capital requirements of banks at the UNCITRAL Colloquium on Secured Transactions and he then presented this proposal at the UNCITRAL 50th Anniversary Congress in July 2017 (5.6, p.166-167). Castellano identified dangers that lack of co-ordination would lead to (1) access to credit being significantly impaired and (2) the stability of the financial system being threatened. He suggested that, to address this problem, guidance on ensuring co-ordination between the rules concerning access to credit and financial stability should be produced by UNCITRAL. The delegations of various governments (Australia, Canada, Italy, Japan, Spain and the United Kingdom) acknowledged the problems identified by Castellano and resolved for UNCITRAL to address this issue, a position which UNCITRAL subsequently endorsed (5.2b, 5.2c and 5.7, paras 221, 402, and 449) This represents a fundamental policy shift for UNCITRAL, which in 2007 resolved not to engage with this issue and, at that time did not see it as an important policy concern (3.1).

As a result, following the recommendation made by Castellano (3.1), a new part - Part III - has been inserted in the UNCITRAL Practice Guide which wholly focuses on the connection between secured transactions law and capital requirements for banks. The chapter provides guidance on how financial institutions can meet their capital requirements, while not restricting the ability of movable assets to qualify as eligible collateral. Such measures are crucial, particularly for developing countries and for MSMEs to ensure that their access to credit policies is not hindered by how banks interpret their capital requirements (5.8).

The World Bank has also drawn extensively on Castellano's work in this field. His work is extensively referenced in the Knowledge Guide (5.3) and subsequently he became lead author of a World Bank Primer on coordinating capital requirements of banks and secured transactions frameworks. Both documents set out international guidelines to assist domestic law and policy reforms. They recognise the seriousness of the problems caused by lack of coordination between secured transactions law and capital requirements of banks (5.3, p.30-35; 5.10, p.8-11). Furthermore, they adopt the reform strategy outlined by Castellano (3.1, 3.3) to simultaneously promote access to credit and financial stability, acknowledging the impact of

Castellano's research both on UNCITRAL instruments and on domestic reforms (**5.3, footnote 109; 5.10 p.8-11**). Echoing the findings of Castellano's research (**3.2**), the Knowledge Guide advises that failure to implement such a coherent strategy "could have far-reaching consequences including reduced availability of credit" (**5.3**).

Castellano has worked as a consultant on a number of domestic reforms implementing the strategy suggested in his research (**3.2** and **3.3**). In this capacity, he has drawn on his research to advise central banks, regulators, and governments of countries in Eastern Europe and Central Asia, Latin America and the Caribbean, the Middle East and North Africa (MENA), Southeast Asia and the Pacific, and Sub-Saharan Africa. As an example of the influence of his scholarship on the policy discourse, in the MENA region his research has been credited with building "the capacity of key government and Central Bank officials in the MENA Region to pursue and further operationalize secured transaction reforms in their home countries." (**5.9**). Furthermore, the World Bank Primer identifies how these efforts, to which Castellano directly contributed, are being implemented at the domestic level. For example, Zambia has reformed its legal framework to create a cohesive set of legal and regulatory rules that allow moveable assets to be used as collateral while capital requirements for banks are upheld (**5.10, p.11**). Furthermore, the strategy to promote coordination between secured transactions law and prudential regulation has proved to be a useful tool in the broader policy action that Bank of Zambia implemented to curb the negative economic consequences of COVID-19 pandemic (**5.10, p.16**).

5. Sources to corroborate the impact (indicative maximum of 10 references)

- 5.1** United Nations, Resolution adopted by the General Assembly on 13 December 2016, A/RES/71/136.
- 5.2** Impact on WG-VI: **a)** Letter from Salvatore Zappalà, Legal Adviser to the Permanent Mission of Italy to the United Nations; **b)** Letter from Spyridon V. Bazinas, Senior Legal Officer, International Trade Law Division, Office of Legal Affairs, UNCITRAL; **c)** Letter from Ignacio Tirado, member of the Spanish Delegation to WG-VI and Secretary-General of UNIDROIT.
- 5.3** World Bank Group, Secured Transactions, Collateral Registries and Movable Asset-Based Financing Knowledge Guide (World Bank, November 2019).
- 5.4** World Bank, Credit Infrastructure (No date), available at worldbank.org.
- 5.5** Kozolchik National Law Center, Global Secured Transactions Monitor (No date), available at natlaw.com
- 5.6** UNCITRAL, Proceedings of the Congress of the UNCITRAL, Vienna, 4-6 July 2017 Volume 4: Papers presented at the Congress (United Nations, 2017).
- 5.7** United Nations, Report of the UNCITRAL, A/72/17 Fiftieth session (3-21 July 2017)
- 5.8** UNCITRAL WG-VI (Security Interests), Draft Practice Guide to the UNCITRAL Model Law on Secured Transactions, thirty-fourth session Vienna, 17–21 December 2018, A/CN.9/WG.VI/WP.79/Add.3
- 5.9** Letter from William Baldrige, Economic Growth Team Leader, United States Agency for International Development (USAID), Middle East Bureau
- 5.10** Castellano et al, *Coordinating Prudential Regulation and Secured Transactions Frameworks: A Primer (English)*. (2020, World Bank).