

United Nations Association of Flanders-Belgium

**“The United Nations and the European Union:
Partners in Multilateralism”**

**Statement by Ms. Patricia O’Brien
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**8 March 2010, 6pm,
Jean Durieux Room, Charlemagne Building, Brussels, Belgium**

Professor Suy,
Mrs. de Peyron,
Professor Wouters,
Distinguished Guests,
Ladies and Gentlemen,

(Introduction)

Thank you very much for the warm welcome, I am delighted to be back in Brussels where, I spent a few years as Legal Adviser to the Permanent Mission of Ireland to the European Union.

I wish to thank Mrs. de Peyron of the European Commission for the kind words of introduction and Professor Wouters and the United Nations Association of Flanders-Belgium for inviting me to address you tonight. I am very grateful for this opportunity.

As this is my first public speech in Brussels as Legal Counsel of the United Nations, I wish to take this opportunity to pay tribute to a very distinguished son of this country, a member of the United Nations Association of Flanders-Belgium and a predecessor. Mr. Erik Suy served as United Nations Legal Counsel from 1974 to 1983 under Secretary-General Waldheim and briefly under Secretary-General Pérez de Cuéllar. I am deeply honoured by his presence tonight.

(The United Nations and the European Union: Partners in Multilateralism)

Allow me to start tonight with a subject of mutual interest: “The United Nations and the European Union as Partners in Multilateralism.”

My suggestion here is that both the United Nations and the European Union have little choice but to remain committed and faithful to the idea of a multilateral international system based on respect for the integrity of their respective foundations as well as on the fundamental rules of the Charter of the United Nations. And this is what makes the United Nations and the European Union partners and natural allies – partners in multilateralism.

As a response to this broad approach, Secretary-General BAN Ki-Moon is advocating a new multilateralism.

As Europeans, we are all naturally supportive of this concept. Referring to the multiple challenges which the world is facing, the Secretary-General has recently said – and I quote – “at a minimum, we must increase global cooperation to address multiple challenges. But we must go further than that. We must re-invent how we, as nations, work together to deliver collective solutions to our collective problems.” He concluded that the time is ripe for a new multilateralism, a multilateralism whose legal instruments – and in particular those of the United Nations – have the authority and the resources to do what is asked of them. As the Secretary-General warns: this new multilateralism – and I quote again: “will only take hold when we act consistently, on the understanding that in our interconnected world, the well-being of one nation depends, to an increasing degree, on the well-being of all other people and all other nations.”

In a communication to the Council and the Parliament, the European Commission stated that: “The European Union’s commitment to multilateralism is a defining principle of its external policy.” This statement also, I suggest, applies to the foreign policy of the individual members of the European Union. Europe’s commitment is essential to the idea of a multilateral international system based on the principle that all states have equal rights and duties and are equal members of the international

community, and that each state has the right to freely choose and develop its political, social economic and cultural systems. So far no other equally convincing and equally universally accepted guiding idea of international relations has appeared.

The challenges we face to keep this multilateral system and its institutions alive and well are bound to increase, not diminish. In the years ahead, Europe's commitment to multilateralism – and to the United Nations as the pivot of the multilateral system – will help determine whether and how the UN's institutional architecture can continue to serve and to evolve as the fundamental basis of the international system.

Multilateralism isn't a vague or woolly end in itself: it is the most important means, among others, of accomplishing our objectives in the context of the world in which we live.

The European Union and the global multilateral order of the United Nations are based on the same idea of integration through law. Intellectually and conceptually, the United Nations and the European Union are built on similar foundations. Both are and should be mutually re-enforcing.

(Targeted sanctions)

And now to legal matters:

The issue of fair and clear procedures for the Security Council sanctions regime is one which, from my perspective, has thrown into sharp relief the dynamic between the two organizations.

In the 2005 World Summit Outcome resolution the General Assembly, at the level of Heads of State and Government, called “upon the Security Council, with the support of the Secretary-General, to ensure that fair and clear procedures exist for placing individuals and entities on sanctions lists and for removing them, as well as for granting humanitarian exemptions.”

He re-affirmed that targeted individual sanctions can be an effective means of combating, among other things, the threat of terrorism, but cautioned that such sanctions will only remain useful to the

extent that they are effective and perceived to be legitimate: that legitimacy depends on procedural fairness and the availability of a remedy to persons wrongly harmed by such sanctions.

The Secretary-General, pursuant to this mandate, took the initiative to convey his views on this issue to the Members of the Security Council.

He submitted to the Council that minimum standards, required to ensure fair and clear procedures, would have to include several basic elements, including the right to be informed; the right to be heard; the right to be assisted or represented by counsel; and the right to review by an effective review mechanism.

The Security Council reacted to the request by establishing a focal point in the Secretariat to receive de-listing requests.

Security Council resolutions of 2005 and 2006 have improved the notification of listings. A further resolution aimed to address the issue of the right to be heard.

The UN Office of Legal Affairs welcomed these steps towards ensuring fair and clear procedures for placing individuals and entities on Security Council sanctions lists and for removing them. These positive developments are a reflection of a widely shared perception that progress was needed. As compared to what the Secretary-General considered to be minimum standard requirements, however, they could not yet be considered to be a comprehensive solution to the problem.

Meanwhile these developments have been accompanied by a growing number of court cases around the world, in which listed individuals and entities have challenged their listing. They have argued that their fundamental human rights have been infringed due to the lack of adequate procedures provided by the Security Council sanctions regime. A corresponding national and regional jurisprudence emerges.

In this connection, let me just mention the recent decision of 27 January 2010 by the UK Supreme Court in “H.M. Treasury v. Ahmed and Others”. This is the first decision where a national court pronounces itself on the impact of Security Council resolution 1904 (2009), which I will refer to again a little later.

In fact, several national and regional courts have been seized of cases which concern, inter alia, obligations under coercive measures issued by the Security Council under Chapter VII of the Charter of the United Nations and their compatibility with obligations under international law, and, specifically for European States, with obligations arising under the European Convention for the Protection of Human Rights and Fundamental Freedoms.

We are following these cases with great interest. I am aware, as you are, that there are more cases currently before the ECJ and, in particular, before the General Court. The Kadi case is certainly the leading case in many respects:

In brief:

On 3 September 2008, the ECJ rendered its judgement in the joint cases “Kadi” and “Yusuf/Al Barakaat” concerning an EC regulation implementing Security Council counter-terrorism resolutions and decisions, in particular those of the “1267” Al-Qaeda and Taliban Sanctions Committee. By its decision, the ECJ annulled the EC regulation in so far as it freezes Mr. Kadi and Al Barakaat’s funds essentially because of violations of the right to be heard, the right to effective judicial review and the right to property.

Modern sanctions, in particular those in the context of the “1267 Committee”, are affecting individuals directly and immediately. This creates a need to address fundamental human rights concerns at the level of the United Nations. Article 103 of the Charter provides that in the event of a conflict between the obligations of the Members of the UN under the Charter and their obligations under any other international agreement, their obligations under the Charter will prevail. This is an important element, and one which cannot be overlooked.

Rights to fair and clear procedures when depriving a person of human rights are recognized both in national laws and in public international law as protecting individuals from arbitrary or unfair treatment by State organs. As a subject of international law, the United Nations is bound by rules and principles of international law. Obligations to observe fair and clear procedures arise from, and are determined by, the Charter of the United Nations, general principles of law and customary international law.

Obviously, it would neither be appropriate nor wise for me to express any unsolicited advice or opinion on how the Security Council should address this thorny issue.

While Europe is awaiting the next round of decisions in “Kadi”, in New York the Security Council is pressing ahead with its work.

Recently, in December 2009, the Security Council unanimously adopted resolution 1904 (2009) in an effort to address the right to an effective review mechanism.

Most notably, the Council decided to establish the “Office of the Ombudsperson” to assist the “1267 Committee” when it considers delisting requests from individuals and entities. For the first time, petitioners seeking their removal from the list can present their case to an independent and impartial Ombudsperson who, after consultations with both relevant states and the petitioner will present his observations to the Committee. In the words of the Council, the creation of this role addresses the “right to review by an independent mechanism.”

In press statements following the adoption of this resolution, Members of the Council stated their satisfaction with the significant improvements. Also, the “informal Group of Like-minded States” – a driving force behind improving Security Council sanctions regimes – strongly welcomed the adoption of the resolution, stating that the establishment of the Office of the Ombudsman “represents a paradigm shift in the sanctions regime dealing with persons and entities associated with the Taliban and Al-Qaida”.

Of course, I agree with that assessment. With the adoption of resolution 1904 (2009) the Security Council has taken a giant step towards ensuring fair and clear procedures for individuals and entities listed by the “1267 Committee”. The Council’s efforts deserve our support.

We will have to see how the first Ombudsperson implements his or her important mandate and how the interaction between the Ombudsperson and the Committee on the one hand, and between the Ombudsperson and the petitioners works in practice. Eventually, a lot will also depend on how the Ombudsperson’s observations will be taken up and dealt with by the Committee.

It will be equally interesting to see what impact resolution 1904 (2009) and its implementation will have on the jurisprudence of national and regional courts seized with relevant cases.

I will, of course, continue to follow these developments attentively.

The issue of counter-terrorism measures, targeted sanctions and the aspect of fair and clear procedures for sanctions regime, which I have just highlighted, is an interesting example of a complex matter that can only ever be handled successfully through multilateral cooperation. Despite its inherent sensitivities, this issue is – in my opinion – a case study of successful cooperation between the principal organs of the United Nations, in checking the General Assembly, the Security Council and the Secretary-General; regional organizations, such as the European Union and its organs; and individual States.

Before I continue my reflections on multilateralism in the context of the relationship between the United Nations and the European Union, allow me to recall another issue that is on my mind as well as on many other people’s minds today. The issue of women’s rights. As they did in the past, many women today have high hopes that this multilateral cooperation will help to fortify their role in the modern world.

(International Women's Day)

Ladies and Gentlemen,

Today is International Women's Day.

In 1975, during International Women's Year, the United Nations began celebrating 8 March as International Women's Day. Two years later, in December 1977, the General Assembly adopted a resolution proclaiming a United Nations Day for Women's Rights and International Peace to be observed on any day of the year by Member States, in accordance with their historical and national traditions. For the United Nations, International Women's Day has been observed on 8 March since 1975. In adopting its resolution on the observance of Women's Day, the General Assembly cited two reasons: firstly to recognize the fact that securing peace and social progress and the full enjoyment of human rights and fundamental freedoms require the active participation, equality and development of women; and secondly to acknowledge the contribution of women to the strengthening of international peace and security. For women, the Day's symbolism has a wider meaning: It is an occasion to review how far women have come in their struggle for equality, peace and development. For 2010, the framework theme for International Women's Day is "Equal Rights, Equal Opportunities: Progress for All." Earlier today, Secretary-General BAN Ki-Moon has issued a statement to mark the occasion.

In his "Agenda 2010" address to the General Assembly of 11 January 2010, the Secretary-General identified the issue of "Empowering women" as one of his seven strategic priorities for 2010. To that end, the Secretary-General will establish a new "gender entity" which will centralize and strengthen a number of mandates and competencies which until now, were scattered across the UN system. Another important element of our strategic priority of empowering women is preventing violence against women. It is a cause for our time which is why, two years ago, we launched our campaign "UNiTE to End Violence against Women". In 2010, we will launch an Africa-wide regional campaign. And just recently, the Secretary-General appointed Ms. Margot Wallström of Sweden, former Vice-President of the European Commission and Commissioner for Institutional

Relations and Communication Strategy, as his Special Representative on the prevention of sexual violence in armed conflict.

The mere fact that the Secretary-General has chosen a woman from Europe and former senior EU official for this important post, shows that the United Nations and the European Union are partners and allies in our common effort to empower women.

(Ending violence against women)

As Legal Counsel of the United Nations, I usually do not travel the world to advocate women's rights. However, by coincidence, the Secretary-General asked me to accompany him at an outreach event in Los Angeles, California, last week, where we did some public campaigning with the US creative community in order to muster support for our advocacy to empower women and to end violence against women.

As a woman on SG's senior management team and as the Legal Counsel, I see it as my duty to provide support to this noble cause. I would like to focus not just on women as victims, but also on women as actors – both in seeking to avoid conflict and in the authorizing of peace.

So firstly to the issue of women as protagonists and the importance of women as a driving force for development, stability and prosperity.

1. The UN maintains and the Security Council has recognized that the participation of women and the inclusion of gender perspectives are crucial to the establishment of sustainable peace. Women must be empowered to fully participate in the prevention, management and resolution of conflict.

2. It is clear that the end of conflict should not result in the marginalization of women, nor their relegation to stereotypical roles. Women's contributions in post-conflict situations can make a critical difference to community survival and reconstruction. Women are crucial to ending violence against women. That violence which is pronounced during open conflict, but which exists even when open hostilities have subsided.

3. Yet, UN research shows that women average only ten per cent of the members of teams at peace talks. Only 2.4% of signatories to peace agreements since 1992 have been women. This imbalance is unfair at best. But, worse, it means women lack a voice in everything that follows. Women speak not only about so-called women's issues, but about key political, social and economic issues relevant to sustainable peace and equality. Experience in my own country has also shown this to be true during the painstaking steps towards peace in Northern Ireland. Women who have experienced conflict can and should be stakeholders in state-building and peace building.

4. These two worlds of women's suffering and empowerment were also in my thoughts recently as I sat just a few feet away from Charles Taylor in a Hague courthouse a few weeks ago. Liberia's story evidences women's roles both as victims and protagonists. During Liberia's conflict, 75% of the country's women were raped. But now, thanks to the efforts of the United Nations, Charles Taylor is sitting behind bars in The Hague answering to these and other alleged crimes in a court of law. The first African woman Head of State in the modern era, President Johnson Sirleaf, is leading her country to peace, stability and socio-economic development. Liberia boasts another first with the UN deployment of the first all-woman peacekeeping contingent in 2007. The increasing use of female peacekeepers is not only an end in itself; it is also a means to many others ends.

For instance, the presence of a large number of women in this capacity is believed to have resulted in improved reporting of instances of violence against women, a corresponding decrease in the actual number of instances of such violence and an increase in the number of women joining the police, the military and the government.

So now to the problem of violence against women, which impacts us all in so many profound ways.

During the Bosnian war, as many as 50,000 women may have been raped. During the Rwandan genocide, the pervasiveness of rape has starkly and brutally reminded us that these were not sexual acts but were acts of violence aimed to de-humanize.

Is it any wonder that in 2008, a UN Force Commander said “it is now more dangerous to be a woman than to be a soldier in modern conflict”?

The UN has been fighting this scourge on many fronts, not least of which through its legal tribunals and courts [ICTY, ICTR, SCSL, ICC]. The UN Criminal Tribunals have made great advances in international criminal justice for women. A 1998 verdict of the Rwanda Tribunal marked the first time an international court found rape to be an act of genocide. In 2001, the Tribunal for the former Yugoslavia convicted Bosnian Serbs for rape, torture, and enslavement committed during the war in Bosnia and Herzegovina. This case marked the first time in history that an international tribunal brought charges expressly- and exclusively- for crimes of sexual violence against women. The Sierra Leone Court extended the law to cover forced marriage, whereby young girls are given as “wives” to rebel fighters. [ICC: Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and other forms of sexual violence are all WAR CRIMES under the Rome Statue of the ICC.]

Yes, the process of justice has been slow. Yes, it has been financially expensive. But, the Tribunals have not been the empty gesture of a powerless or indifferent international community. Instead, they have been the successful pioneers in the search for justice in the aftermath of dreadful crimes. I truly believe that their judgments are having an effect to make others think twice before they commit these war crimes.

Images of Bosnian women came to my mind as, on a recent visit to the Hague courthouse of the ICTY, I contemplated the demise of former President Milosevic – the first Head of State brought before a UN war crimes tribunal – and as I observed the trial of his associate, Mr. Perisic. [Early

this month, the trial commenced of Gen. Tolimir (Deputy of Mladic, one of the two remaining fugitives of the ICTY.)]

When the perpetrators who have been caught and jailed were commanding their subordinates to rape and pillage in Rwanda, the former Yugoslavia or Sierra Leone and Liberia, I don't think they ever imagined for a moment that they would be brought to justice for their crimes.

For instance, I doubt it crossed the mind of the former Governor of Kigali – Renzaho – that a UN criminal tribunal would jail him for life for his crimes, including counts of rape as crimes against humanity.

Neither did Serbian Kunarac who has successfully been prosecuted for gang rape, torture and enslavement. He is now serving a 28-year sentence.

Many of those most responsible – including for concerted campaigns of violence against women - have been held to account. Experience and common sense tell us that this will make some others think twice before they plan to terrorize women as a group in the future.

The Reach of the International Courts goes well beyond the confines of the courtroom. As described by the Prosecutor of the ICC, we now have a large “shadow of the Court”. [Collective effect of international criminal justice]

SHADOW

1. Salutory effect on behaviour of Governments.
2. Armies all over the world are adjusting their operational standards/rules of engagement and training to standards applied by the Courts. Cynics might say – inspired by fear of the long arm of the law – others by intention to comply to the law – whatever the reason, the Courts have an effect.
3. Conflict Managers and peace mediators have to adjust methods so as not to undermine the work of the Courts.

4. SG's strong guidelines which include the non recognition of amnesty for war crimes, crimes on humanity and genocide.

Reports of widespread rape and other atrocities pour in from all corners of the world, especially from Darfur, and the provinces of the Democratic Republic of the Congo.

I am proud to say that our Secretary-General is leading the effort at the UN to address these problems. Describing the use of violence against women by war leaders, he has said (and I quote): "Like a grenade or a gun, sexual violence is part of their arsenal to pursue military, political, social and economic aims. The perpetrators generally operate with impunity. I have met victims of sexual violence. I am haunted by their testimony." (end of quote) He has shown time and again that he is willing to act on those beliefs. Most recently, he convened a Commission of Inquiry to address the dreadful crimes committed in Guinea, where in a stadium on 28 September, 150 killed, 1200 injured and unprecedented sexual violence was inflicted on dozens of women. The prospect of accountability is looming.

Violence against women and the instability it causes is often kept in the shadows. We all know that past violations breed further violations and our objective is always to prevent or to deter future violations. Impunity cannot be tolerated.

So, today there are women in Rwanda and Bosnia who were violated during the last decade who at least have seen perpetrators jailed and justice delivered. This is a welcome development. Equally importantly, because of this insistence on accountability by the UN and the international community, there are women all over the world who might be spared the ordeals that the women of Rwanda, Guinea and Bosnia suffered and the women of Chad, Darfur and Eastern Congo continue to suffer.

By pursuing the end of impunity and the principle of accountability, the UN and international law are serving a real purpose for women- upholding justice and preventing further violence.

(International Criminal Justice)

This leads me to a broader issue which I have chosen to speak about today because it lies at the very heart of the work of my Office: the support for our system of international criminal justice and the quest to ending impunity for war crimes, crimes against humanity and genocide.

As you all know, many important trials against perpetrators of international crimes have been conducted within the ICTY for Yugoslavia and the ICTR for Rwanda. It is also worth mentioning developments at the Special Court for Sierra Leone and the Extraordinary Chambers of the Courts of Cambodia. As far as the Special Court for Sierra Leone is concerned, this is the first “mixed” or “hybrid” Tribunal established by Agreement between the UN and a Member State Government. It has led to developments which are particularly noteworthy, like its judgment, in February 2008, in the so-called “RUF case” against three members of the Revolutionary United Front. This is the first judgment as I mentioned earlier, to convict individuals of forced marriage as a separate crime against humanity. It also categorises, as a specific war crime, attacks against peacekeepers – including their killing and abduction in different parts of Sierra Leone during 2000. The Court’s only remaining trial - the case which I mentioned earlier against Liberian former President Charles Taylor - is well underway in the Hague. So the Court is preparing to close its doors after a successful undertaking.

As to the Extraordinary Chambers of the Courts of Cambodia, which has recently completed its first trial, I would like to emphasize that it has become a catalyst for strengthening the rule of law in Cambodia. After all, this is a country where criminal justice is virtually unknown. In this context, the Extraordinary Chambers is not just a mechanism for accountability, bringing justice to the victims of the Khmer Rouge regime. Equally important is the fact that, in a country like Cambodia, it is also the catalyst for its national judicial reform and development, and has become an essential element of building capacity for the establishment of rule of law and good governance.

The same should be said of the Special Tribunal for Lebanon, launched by the Secretary-General in March 2009, which marks a decisive milestone for bringing those responsible to justice and for restoring confidence and peace in this beautiful but torn country.

If we want to make a fair assessment of the work achieved by the Tribunals and Special Courts, we should be prepared to acknowledge the fact that an appetite to establish further ad hoc tribunals is not evident. There may be several reasons for this and it should not be taken as an indication that these institutions have “failed”: instead, they have been the successful pioneers in the search for justice in the aftermath of dreadful crimes and their work has marked a very important point in the development of international criminal justice, which few might have foreseen when they were established. It is now time to build on these early efforts so as to develop and maintain a very real culture of accountability.

The Secretary-General has and will continue to support and assist the International Criminal Court, the centrepiece of this international system of criminal justice, with full respect for its independent character. As a permanent institution, the International Criminal Court has, we believe, the advantage of having a continuing deterrent effect on decision-makers at the highest level. Indeed, the Rome Statute is designed to reach those who bear the ultimate responsibility for actions of State organs. The ICC provides a standing complement to national criminal accountability mechanisms; and complementarity, as we all know, is a fundamental principle of the ICC regime.

But ensuring accountability cannot be the work of one court, one judicial system, one State, or one region. Ending impunity must, and does, rest upon the complementary efforts of national and international criminal accountability systems, the existence of the rule of law within nations and among nations, and the unwavering commitment of the international community to maintain conditions under which justice and peace prevail.

These considerations guide us in our common fight against impunity, in particular on the way to upcoming landmark events such as the first review conference of the Rome Statute of the International Criminal Court from 31 May to 11 June this year in Kampala, Uganda.

(conclusion)

This leads me to my conclusion.

The United Nations needs the European Union and its Member States. This is a fact. The United Nations needs the European Union as a partner, a partner in multilateralism.

Tomorrow, we celebrate “Europe Day” and commemorate the 60th anniversary of Robert Schuman’s 9 May 1950 declaration in the Quai d’Orsay where he proposed the creation of a new organization of States in Europe as a supranational community.

The fundamental principle of this idea – i.e. France’s aim to create a democratic organization for Europe which a post-war, democratic Germany could join – was announced by Robert Schuman as Minister of Foreign Affairs of the French Republic in his speeches before the United Nations General Assembly in September of 1948 and in September of 1949.

Let us also celebrate the legacy of Walter Hallstein, the first President of the European Commission, who conceived the idea of Europe as a “Rechtsgemeinschaft”, or a “community based on the rule of law”. This concept applies both to the EU and the UN Organisations not held together by force, either police or military, but only by the belief that jointly created rules have to be respected, applied and enforced.

I see the Charter of the United Nations as the constitution of the international community. This is what unites our two organizations. The United Nations and the European Union are rules-based organizations. They are systems where the might does not determine the law but where the law domesticates the might.

And let’s not forget that the strength of both the United Nations and the European Union flows from the deliberate choice of multilateralism as a guiding principle.

Thank you very much for your attention.

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