



**UNITED NATIONS
OFFICE OF LEGAL AFFAIRS**

“Practising International Law at the United Nations”

Statement

by

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**To commemorate the 90th anniversary of UNIDROIT
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Eccellenze,
Autorità,
Signore e Signori,

È un grande piacere essere oggi qui con voi in occasione del novantesimo anniversario dell'UNIDROIT. Le radici dell'UNIDROIT affondano nella storia della Lega delle Nazioni.

Questa longevità rappresenta di per sé un aspetto significativo della rilevanza dell'UNIDROIT.

Vorrei quindi in primo luogo porgere le mie congratulazioni ai rappresentanti dell'UNIDROIT oggi qui riuniti, per il loro importante contributo alla modernizzazione, armonizzazione e coordinamento dei vari sistemi di diritto privato e commerciale.

In qualità di Consigliere Giuridico della Nazioni Unite, ho esperienza diretta delle difficoltà che si incontrano quando si cerca un terreno comune tra Stati su questioni delicate ed importanti.

Pertanto, non posso che ribadire il mio plauso per il lavoro significativo svolto dall'UNIDROIT nel corso dei suoi primi novanta anni di attività e continuerò a seguirlo con grande interesse.

Ora, con il vostro permesso, continuerò il resto del mio discorso in inglese.



At the outset of my remarks, I would like to take a few moments to focus on the nature and potential of UNIDROIT's continuing cooperation with the United Nations and, in particular, its engagement with the United Nations Commission on International Trade Law, known as UNCITRAL. This relationship goes beyond the mere movement of staff between the two organizations although that phenomenon is positive evidence of their closeness.

On a formal level, UNIDROIT has, as an independent intergovernmental organization, been represented as an observer at UNCITRAL since the Commission's first session in 1968. Since 2013, it has also been invited as an observer to sessions of the United Nations General Assembly. UNCITRAL, via the UN Secretariat, is likewise an observer at UNIDROIT, contributing recently, for example, to work in the fields of long-term contracts and security interests. Observer status provides a platform to play an important role, but the breadth of actual and potential cooperation goes even further.

Tangible cooperation between UNIDROIT and the UN was initially formalized in the 1959 agreement between the organizations on cooperation and the exchange of information in matters of mutual interest. That agreement was motivated by a resolution of the UN's Economic and Social Council requesting further coordination with UNIDROIT and the Hague Conference on Private International Law. Under the resulting arrangement, UNIDROIT may propose items for consideration by organs of the United Nations and shall, at the UN's request, render assistance with respect to studies relating to the questions of comparative law and the unification of rules of private law.

In line with this arrangement, UNIDROIT has worked with various UN bodies and specialized agencies in the preparation of its legal instruments. The recent work on contract farming carried out in cooperation with the Food and Agriculture Organization and the International Fund for Agricultural Development is one example. Past projects include work on international protection of cultural property carried out with the United Nations Educational, Scientific and Cultural Organization and work on international carriage of goods by road prepared with the United Nations Economic Commission for Europe.



Of course, the 1959 cooperation agreement predates the establishment in 1966 of UNCITRAL, which is the core legal body in the United Nations system in many of the areas most relevant to UNIDROIT. It is not surprising, therefore, that UNIDROIT's cooperation with UNCITRAL forms the basis of the most regular contact with the United Nations today.

With regards to that cooperation, I see it as having manifested itself in two ways since the establishment of UNCITRAL.

First, there have been areas of work shared between the two organizations that have benefited from what I would call "cross-fertilization". Second, there have been other instances more characterized by "complementarity".

Certainly, the best known instance of cross-fertilization between UNIDROIT and UNCITRAL relates to work done on international contracts, in particular related to the sale of goods.

UNIDROIT began working in earnest in the field in the 1930s and produced in 1964 the two complementary Hague Conventions relating to Uniform Laws on the International Sale of Goods and the Formation of Contracts for the International Sale of Goods. Despite the sophistication of these instruments, they were criticized as primarily reflecting the legal traditions and economic realities of continental Western Europe, and they did not gain wide acceptance.

Upon its establishment, UNCITRAL was seen as the proper forum to take this work forward and create an instrument capable of acceptance across legal, social and economic systems. In 1980, after years of hard work and taking into full account the Hague Conventions, the United Nations Convention on Contracts for the International Sale of Goods was adopted.

It remains one of UNCITRAL's flagship instruments with 84 State parties, which are, between them, responsible for roughly 75% of global trade.

The influence of the Hague Conventions on the Convention on the International Sale of Goods is clear, and the genesis of the latter convention highlights the strengths and complementarity of the working methods of both organizations.



UNIDROIT's approach, utilizing at its core study groups composed of experts acting in their personal capacity, created sophisticated and mature instruments that were then adapted to meet global needs through UNCITRAL's inclusive and multi-tiered intergovernmental process. This combined approach led to the conclusion of a successful multilateral treaty.

The Convention on the International Sale of Goods, in turn, is recognized as the inspiration for the UNIDROIT Principles on International Commercial Contracts, first published in 1994.

The UNIDROIT Principles, an optional soft law instrument, are broader in scope than the Convention in that they specifically apply to contracts in general, not just sales.

UNCITRAL endorsed the 2004 and 2010 versions of the UNIDROIT Principles, commending their use, as appropriate, for their intended purposes. The study group behind the Principles skillfully combined universally applicable contract law concepts with approaches more characteristic of specific legal regimes.

This expert-driven approach, free from the universalist constraints inherent to the UNCITRAL law-making process, can be particularly well suited for creating an instrument that aims to become an attractive option for sophisticated trading partners from certain legal traditions.

The Principles are now one of UNIDROIT's most prominent instruments. It is clear that the cross-fertilization in this field has led to some of the most successful work undertaken by these organizations and cannot be ignored as we consider future joint initiatives.

With regards to cooperation through "complementarity", a fine example would be the efforts of UNCITRAL, UNIDROIT and the Hague Conference on Private International Law in the field of security interests. In this area, the three organizations prepared a joint publication approved by UNCITRAL at its 44th session in 2011.

This publication reflects more than 20 years of successful coordination among the three organizations to avoid duplication of efforts, overlap and inconsistency in the field of security interests.



As noted in the introduction: “This coordination results in instruments that complement each other and thus may be considered and implemented by States either as part of a comprehensive systemic reform or separately”.

Work in this field continues in a complementary manner, and I understand that soon this publication may need to be updated to cover the results of coordination efforts in the last five years reflected in the Geneva Securities Convention, the UNCITRAL Guide on the Implementation of a Security Rights Registry and the UNCITRAL Model Law on Secured Transactions.

The Commission is expected to adopt this model law at its upcoming 49th session in June-July 2016.

I also understand that this successful coordination and publication may well form the basis for further coordination among the three organizations.

This would focus on providing technical assistance to States interested in considering adoption of any of the three organizations’ security interests texts.

I am positive that the complementary approach to coordination in this field will continue and will ensure that the scope of the proposed 4th Protocol of the Cape Town Convention on Mining, Agriculture and Construction Equipment will reflect the need to avoid duplication of efforts, overlap and conflict with the UNCITRAL texts on security interests.

A further example of complementarity involves work to coordinate the insolvency provisions of several UNIDROIT instruments with the texts in this field completed by UNCITRAL.

That work involved, in particular, efforts to align the UNIDROIT Principles on the Operation of Close-out Netting Provisions with the treatment accorded to financial contracts in the UNCITRAL Legislative Guide on Insolvency Law.

Proposals to update the relevant chapter of the UNCITRAL Legislative Guide, following lessons learned from the global financial crisis,



would take the Principles into account as an important international text on close-out netting.

As we look forward to continued fruitful cooperation between UNCITRAL and UNIDROIT, I hope these observations will be of use in coordinating efforts.

I know that UNIDROIT's Governing Council and UNCITRAL will consider later this year a joint proposal from the secretariats of both organizations and that of the Hague Conference on cooperation in the area of international contract law with a focus on sales.

Given the similar scope of the successful instruments produced by each organization in this field and the desire to further promote them, the proposal envisions the creation of an explanatory text as a guidance to these instruments, primarily the Convention on the International Sale of Goods, the UNIDROIT Principles, and the Hague Conference's Principles on Choice of Law in International Commercial Contracts.

The Hague Principles, already endorsed by UNCITRAL and influenced by both the Convention on the International Sale of Goods and the UNIDROIT Principles, are the newest entry to this field and form an important contribution to the promotion of party autonomy in international commercial contracts.

The proposal on this joint project has already been welcomed by the Hague Conference, and, if approved by UNIDROIT and UNCITRAL, I am confident that the resulting explanatory text would continue to build on the cross-fertilization and complementarity of the instruments to be considered.

Allow me now to transition and to say a few words about international law and the United Nations more broadly.

As the foregoing discussion regarding cooperation between UNIDROIT and UNCITRAL demonstrates, law and the United Nations are inextricably linked.

The Organization is founded on a legal instrument, the Charter, and all of its activities are based on the legal authority that that instrument provides.



Day-in, day-out, all over the world, in peacekeeping missions, humanitarian activities, on human rights and development, on trade and commerce - as I have outlined -legal considerations are an integral part of the Organization's operational calculus.

Like any constitutional system, the broad outlines of the founding instrument are sharpened through their application to specific cases. The Charter and the practice thereunder is perpetually-evolving.

The United Nations also operates in a unique legal world. International law is decentralised and no single central organ exercises functions akin to legislatures in national legal orders. This creates a rather complex system.

The Office of Legal Affairs serves as the "central legal service" of the Organization and is the primary legal authority for the Secretariat, as well as the various United Nations organs and bodies. The range of questions on which the Office is asked to provide advice is therefore exceptionally broad.

While the Office of Legal Affairs has an established role, the effectiveness of its opinions does not rely so much on formal authority, such as, for example, that which tribunals and other judicial organs may enjoy. Rather, as Oscar Schachter, a former Director in the Office of Legal Affairs, once remarked all the way back in 1948, the value and weight of its opinions depends "on their intrinsic merits, legal soundness and persuasive force".

In order to be effective legal advisers, we must put ourselves in the shoes of those that receive our advice, and understand not only their mandates, but also the circumstances within which they operate.

Given the legal structure of the Organization, it is not surprising that the rule of law and adherence to legal principles are critical to all aspects of United Nations activities. Legal advice represents a critical element for ensuring that the United Nations, and each of its constituent entities, holds to its constitutional foundations and operates according to the rule of law.

The size and complexity of the Organization has increased significantly over the years as the General Assembly, the Security Council and the Economic and Social Council have been active in establishing subsidiary organs with diverse mandates to help the Organization fulfil its purposes.



Collectively, these various entities, acting in accordance with their legal mandates, have created a remarkably diverse and active institutional “ecosystem” at the international level. The Organization’s perpetual expansion and evolution has created ample challenges in interpreting and applying the law to its activities.

As the promotion of the “rule of law” is key to so many of our mandates, it is essential that we also “practice what we preach” and conduct our activities on solid legal footing.

The legal considerations associated with United Nations peacekeeping operations illustrate this point.

Legal advice is provided at each step of the peacekeeping process, beginning with the establishment of the respective mission by the Security Council, the building-up of the mission’s components through the receipt of contributions of personnel and equipment by Member States and the conclusion of the status-of-forces agreement with the host country.

The complexity of contemporary mandates has given rise to new legal challenges. For example, mandates to provide support to non-United Nations security forces, such as for United Nations missions operating in the Democratic Republic of the Congo and Somalia, have required that the United Nations take measures to ensure that it does not provide support to forces that commit serious violations of international humanitarian and human rights law.

Beginning in 2009, the Office of Legal Affairs, together with other relevant departments, worked to establish what has become known as the “Human Rights Due Diligence Policy”. While originally formulated to address challenges encountered by the United Nations operation in the Democratic Republic of the Congo, this policy now applies across the board where the United Nations is considering providing some form of support to non-United Nations security forces.

In a nutshell, it specifies that United Nations operations shall not participate in, or support, non-United Nations security forces if there are substantial grounds to believe there is a real risk that such units will violate international humanitarian, human rights or refugee law. Support must be suspended or withdrawn where, despite being notified of violations, recipient



entities do not take appropriate ameliorative steps to bring the violations to an end.

The multidimensional nature of peacekeeping mandates has entailed increased contact between peacekeeping personnel with local populations, whether it be via policing activities, disarmament, demobilization and reintegration, electoral assistance or pure humanitarian assistance. This in turn means that the United Nations also has to be broader in its “due diligence” to avoid the potential abuse of members of the local population by the same peacekeepers that are meant to protect and assist them.

The Office of Legal Affairs works closely with the Department of Peacekeeping Operations and the Department of Field Support to keep such risks at a minimum and to ensure accountability for any abuses.

One important example in this regard is represented by the measures taken to strengthen and enforce the Secretary-General’s “zero tolerance” policy on sexual exploitation, and abuse. Sadly, as recent events in the Central African Republic have illustrated, there are significant challenges involved to ensure that personnel serving in peacekeeping operations are adequately trained, that discipline is enforced, and that persons who commit crimes are held accountable.

While issues of peacekeeping and other operational endeavors take up a great deal of the Office’s time, there are also a number of other legal developments going on at the United Nations on a regular basis on which we are engaged.

For instance, the broad mandate and near universal membership of the United Nations makes it a unique venue for collective action. From an international law perspective, a primary, although not exclusive, form of such action is the elaboration of multilateral treaties.

I have already addressed the Convention on the International Sale of Goods and a number of other instruments in detail.

A recent example of a prominent agreement adopted under the auspices of the United Nations, of which I am sure you are aware, is the climate agreement reached in Paris in December, which was adopted under the United



Nations Framework Convention on Climate Change, and for which the Secretary-General will serve as the Depositary.

The upcoming high-level signing ceremony for the agreement in New York testifies to the prominence of this instrument. It will be indispensable as the international community seeks to address the threat of climate change for the benefit of all humankind.

Overall, the number of multilateral treaties adopted under the auspices of the United Nations has grown exponentially. In 1977, around 80 multilateral treaties were deposited with the Secretary-General. Less than forty years later, this figure has risen to more than 560.

The Office is also involved in supporting various organs and subsidiary bodies that have a substantial impact on developing international legal rules.

Article 13 of the Charter calls on the General Assembly to initiate studies and make recommendations for the purpose of “encouraging the progressive development of international law and its codification”.

In discharging this task, the Assembly has essentially established what I would call a “conveyor belt” of international law-making.

The manufacturing process ideally begins with the International Law Commission, where issues are considered and instruments are drafted, and traverses back through the General Assembly, in particular its Sixth Committee, which is responsible for legal matters, where instruments are further considered and developed by Member States before being adopted and opened for accession.

The Codification Division of the Office of Legal Affairs serves as the Secretariat for both the Sixth Committee and the International Law Commission.

The key consideration underlying the dual concepts of “progressive development” and “codification” of international law is the belief that written international law will remove the uncertainties of customary international law by filling existing gaps in the law, as well as by giving precision to abstract general principles whose practical application is not settled.



Those in UNIDROIT know this balance well, as they seek to unify and modernize private and commercial law.

In the exercise of their deliberative functions, the General Assembly and the Security Council have also been active and influential in the development of international law.

The Assembly's broad mandate has meant that it has considered a wide range of activities and topics. While much of this work has, necessarily, been undertaken at the political level, such activities have been accompanied by, or have led to, the further development of international rules.

Its contribution to the development of international law in this context has been largely indirect, either by way of providing general policy guidance to the law-making process, or more procedural through the formal establishment of processes or subsidiary bodies with a mandate to consider the legal aspects of specific issues.

Of all the areas the Assembly has been involved in over the course of the last 70 years, its activities in the area of human rights have been particularly normative. The Assembly has adopted a number of declarations and other texts, many of which served as a basis for the subsequent negotiation of major multilateral treaties.

While the Security Council has a narrower mandate than the General Assembly, it has the power to take binding decisions on substantive matters, which gives it a unique legal authority.

Under Chapter VII of the Charter, the Security Council has the authority to determine the existence of a threat to the peace, a breach of the peace, or an act of aggression, and to make recommendations, or decide what measures shall be taken to maintain or restore international peace and security.

In practice, such measures have ranged from targeted sanctions against terrorists, to the establishment of peacekeeping operations and the creation of international criminal tribunals.

The Council's contributions to international law are not limited to its Chapter VII actions. For instance, with respect to the situation in Syria, where



Council members have been unable to agree on resolutions invoking Chapter VII, there have nonetheless been a number of important actions taken by the Council, including with respect to humanitarian access and relief, the elimination and destruction of chemical weapons and the identification of those responsible for their use, counter-terrorism and, most recently, the call for the Secretary-General to convene, through his good offices and his Special Envoy for Syria, formal negotiations on a political settlement and transition.

Each of these developments has included specific legal elements that have had to be considered. They have also produced legal effects.

I hope that this helps to shed some light on the practice of international law at the United Nations. I have necessarily been able to address only a portion of the body of work undertaken by the Office of Legal Affairs, but I hope that it has been illustrative.

Thank you.