

*150th Anniversary of  
the International Law Association  
Opening ceremony  
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*International law in practice: the international unification of law*

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We are here to celebrate the 150th anniversary of the ILA. To approach the subject of international law through the prism of UNIDROIT, I have to go back nearly 100 (not 150) years . In September 1924, Italy proposed for the first time the creation of an organization within the League of Nations for the unification of law. The latter established this as an auxiliary organisation in 1926.

At the ceremony marking the start of the Institute's activities on 30 May 1928, Vittorio Scialoja, appointed first President of UNIDROIT, established a link between the unification of law, the establishment of rules for the conflict of laws and other forms of interstate cooperation. He advocated for a specific role for the unification of law, through both treaties and uniform laws, just as René David did in 1969 within UNCITRAL, by envisaging a prominent place for model laws among the methods of unification.

« L'Institut pour l'unification du droit privé commence, en ce moment solennelle, sa vie active.

[...] que notre but soit réalisable ... c'est ce qui est démontré non seulement par l'histoire, mais aussi par les faits qui, de notre temps, se multiplient de jour en jour.

Je ne citerai pas la série des traités relatifs au droit international privé, qui sont connus de tous, parce que notre tâche n'est pas de fixer les normes réglant les conflits entre les lois des différents Pays, mais plutôt d'éviter de pareils conflits en unifiant le contenu de ces lois. Toutefois et bien que le but en soit ainsi logiquement opposé, l'affinité indéniable entre les différentes fins est telle que, p. ex., l'Institut de Droit International, l'International Law Association, ont plus d'une fois, elles aussi, préparé des schémas de lois uniformes. [...] Des relations plus directes entre notre entreprise et le Comité Maritime International bien connu ... a déjà des fruits d'une importance considérable. »

Beyond Scialoja, however, it was Antonio José Restrepo, representing the President of the Council of the League of Nations, who linked this exercise to the essence of progress and the achievement of the common good. This highlights the role of studies and research which were (and still are) the basis of the work of the Institute:

« Nous travaillons, en quelque sorte, avec le concours des siècles passés. Si nous voulions négliger ... ce riche héritage, nous renoncerions aux dons précieux commun à l'essence de toute vraie science : la communauté des idées scientifiques et le progrès continu de l'humanité. Sans cela, cette communauté même pourrait dégénérer en conventionnalisme stérile. [...]

Il s'agissait, au temps de Savigny, d'accomplir un travail purement scientifique. Il s'agit aujourd'hui d'une œuvre essentiellement pratique, et, pourtant, plus difficile et plus utile à l'humanité. Réunir dans une unité supérieure les divergences qui se présentent : voilà la méthode de travail et le but suprême de la Société de Nations dans ces différents champs d'action, voilà la méthode de travail et le but du nouvel Institut. »

In 1940, UNIDROIT became an intergovernmental organisation in its own right while retaining its mandate and maintaining the original governance scheme.

UNIDROIT is known for its Conventions, from the first on international sales adopted in The Hague in July 1964, to the Convention on international interests in mobile equipment signed in Cape Town in 2001, with its four Protocols. These conventions also include the well-known Convention on Stolen or Illegally Exported Cultural Objects of 1995, as well as the Convention on Substantive Rules for Intermediated Securities, adopted in 2009.

However, UNIDROIT is also known for its many Legal Guides and Model Laws. Among these, it is worth mentioning the recent adoption by our Governing Council of the Model Law on Factoring. In addition, UNIDROIT has also developed Legal Guides in collaboration with FAO and IFAD in the agricultural field. All these soft law instruments are intended for States and, although they do not impose binding obligations, they offer common principles which at least facilitate coherent interpretation of the various national legislative measures having a common international origin. These instruments are developed taking into account the specificities of each internal legal order, in order to promote a harmonised approach and better coordination in specific areas.

Additionally, many of these tools are considered to represent international best practices and their adoption may be a condition, among other things, for obtaining funding from international financial institutions. The role of soft law instruments in the field of international law is certainly not a new subject. However, in the context of the unification of law, today it is becoming a priority, at least as a matter of fact, and deserves particular attention. (Indeed, this is a subject that ILA Italia and UNIDROIT have recently started to study together.)

Finally, UNIDROIT is also known for its Principles of International Commercial Contracts, which have been followed by other principles, such as those concerning the enforceability of close-out netting clauses, civil procedure, reinsurance, and the application of private law to digital assets (the lattermost having been adopted in May of this year). The Principles of Commercial Contracts are another distinct tool which can be used for the interpretation of national law but which can also be directly applied by individuals reproducing them in their agreements. However, not only do the Principles address States and individuals without distinction (as is the case for the OECD Guidelines on multinationals), but they can also be used directly as applicable law. There are arbitral decisions which confirm this and which shed interesting light on the content of the modern *ius mercatorum*, as well as on its relationship with the sources of international law.

Furthermore, the joint project just launched by UNIDROIT and the International Chamber of Commerce (ICC) on investment contracts and the use of the UNIDROIT Principles in this context opens new perspectives. This project explores, among other things, the application of the UNIDROIT Principles in investment contracts, where one of the parties is in fact a State.

For scholars in international law attentive to the changes and critical issues of our times, I believe that there are at least two points of interest in UNIDROIT's unification work: the tools of unification – as ever, but today much more so than in the past - incorporate soft law. Insofar as it does not affect the conceptualisation of international law, this at least has implications for international governance.

Moreover, the specificity of UNIDROIT lies in its method of work, which primarily involves the participation of experts and aims not to adopt the statistically most common solution, but rather one that best meets the specific needs of each case. This approach re-evaluates the role of scholars, the scientific method and research oriented towards concrete and practical results. It promotes convergence between the interests of the state (the public domain) and those of individuals (the private domain) by developing a theoretical approach that facilitates sharing and acceptance, while justifying and elevating the premises on which such convergence rests.

Happy birthday to ILA. Through UNIDROIT, I can only wish us experts in international law a future full of new intellectual challenges.