



UNIDROIT

International Institute for the Unification of Private Law
Institut International pour l'Unification du Droit Privé

MAKING SENSE OF SOFT LAW: LAWMAKING, STATE RESPONSIBILITY, AND THE SOURCES OF LAW

14 December 2023
UNIDROIT Headquarters
Villa Aldobrandini,
Via Panisperna 28
Rome

II High-Level Dialogue



Background

The First High Level Dialogue on Soft Law in International Governance held on 15 December 2022 at UNIDROIT headquarters in Rome on the occasion of the 81st Session of UNIDROIT General Assembly, contributed to enhancing the dialogue among UNIDROIT Member States and the legal advisors of Foreign Ministries of member or observer States of CAHDI on the identification of common concerns in the field of public international law-making and its contemporary configuration. This first discussion touched upon the main issues at stake across the various areas of international law, and domestic experience was shared.

Meanwhile, the Ad Hoc Committee for International Law of the Council of Europe (CAHDI), discussed and approved, at its 65th Session, the launch of a questionnaire enquiring about the main conceptual and operational challenges posed by “soft” law at domestic level, in particular for the activities of MFAs/LDs of member States. Simultaneously, UNIDROIT adopted two new soft instruments of extreme relevance (its Principles on Digital Assets and Private Law and its Model Law on Factoring). Continuing in its evaluation of the form and role of its own instruments in global governance, and strong of such new recent achievements, UNIDROIT feels the need to progress in such analysis, and support a wider debate among its members and outside countries.



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Against this background, the Second High-Level Dialogue will widen and deepen the discussion based on recent developments through the involvement of members of the International Law Commission and other distinguished guests involved in international institutions and tribunals. Soft law instruments continue to be adopted in all matters related to environmental protection and climate change, the law of the sea, the protection of the oceans, and other traditional areas of law. Similarly, but in a different area, new forms of cooperation on artificial intelligence and the digital world – inter alia by the G7 – are being proposed and shaped as soft law instruments. Significantly, on 29 March 2023, the General Assembly of the United Nations adopted resolution A/RES/77/276 in which it requested the International Court of Justice to give an advisory opinion on “the obligations of States in respect of climate change” and where it specifically referred mainly to soft law instruments (“Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment [...]).

To address those issues, the Second High-Level Dialogue - dedicated to “Making Sense of Soft Law: Lawmaking, State Responsibility, and the sources of law” -, will be structured into two panels. The first panel will frame the terms of the problem with the help of two members of the International Law Commission who both address as Rapporteur matters relevant for the analysis of soft law in international law. The second panel will feature a discussion by a diplomat and member of the International Law Commission, a members of an intergovernmental organisation and State delegates experienced in international lawmaking. We hope that the active participation in the debate of delegates of UNIDROIT member states and of legal advisors of Foreign Ministries of member or observer States of CAHDI will permit us to open a frank and constructive dialogue on such issues.

The event will be concluded by the launch of the joint research by the Italian branch of ILA and the Academic Center of UNIDROIT on soft law in international law and governance, whose results shall celebrate the respective 100 Anniversary of the Italy branch of ILA (2025) and of UNIDROIT (2026).

We thank the Legal Advisor of the Italian Ministry for Foreign Affairs for his cooperation in the organization of these High-Level Dialogues and his involvement of the CAHDI membership, as well as ILA - Italian branch for contributing in the development of research in this field.

Maria Chiara Malaguti (President, UNIDROIT)
Ignacio Tirado (Secretary General, UNIDROIT)

By invitation only



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PROGRAMME

15.00 GREETINGS

Prof. Maria Chiara Malaguti – President UNIDROIT

Min. Plen. Stefano Zanini – Head of Service for Legal Affairs, Diplomatic Disputes and Treaties, Ministry of Foreign Affairs and International Cooperation of Italy

Prof. Attila Tanzi, President of the Italian branch of the International Law Association

15.15 CONTEMPORARY INTERNATIONAL LAW AND SOFT LAW

Moderator: Prof. Attila Tanzi, President of the Italian Branch of the International Law Association and Alma Mater Studiorum University of Bologna (Italy)

Introductory remarks: Prof. Maria Chiara Malaguti, President UNIDROIT and Catholic University of the Sacred Heart (Italy)

Prof. Patricia Galvao Teles, Member of the International Law Commission and Autonomous University of Lisbon (Portugal)

Prof. Mathias Forteau, Member of the International Law Commission and University of Paris Nanterre (France)

16.30 REASONING OF CONCRETE EXPERIENCES BETWEEN INTERNATIONAL AND TRANSNATIONAL LAW

Moderator: Prof. Anna Veneziano, Deputy Secretary General UNIDROIT and University of Teramo (Italy)

Introductory remarks: Prof. Ignacio Tirado, Secretary General UNIDROIT and Universidad Autónoma de Madrid (Spain)

H.E. Prof. Mario Javier Agustin Oyarzábal, Member of the International Law Commission and Ambassador of the

The aim of the High-Level Dialogues



The main aim of these yearly events is to **enhance the dialogue between Foreign Ministry Legal Advisors and other Governmental legal experts** in identifying common experiences and concerns in the field of **public international law-making** and its contemporary configurations. The practice on **transnational law reform shall hopefully specifically contribute to such debate.**

It is hoped that providing such a platform for discussion and experience sharing in the field may also promote a common understanding of the forms of the law, as well as of its contents, and clarify the tension between law-making and compliance with the law.



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Argentine Republic to the Kingdom of the Netherlands
(Argentina)

Prof. Jørgen Sjørgard Skiold, Norwegian Ministry of
Foreign Affairs and University of Oslo (Norway)

Interventions from the floor

Invited guests

Prof. Ida Caracciolo, International Tribunal for the Law of
the Sea and University of Campania "L. Vanvitelli" (Italy)

Prof. Giuseppe Nesi, Member of the International Law
Commission and University of Trento (Italy)

17.45 CONCLUDING REMARKS

Prof. Maria Chiara Malaguti – President UNIDROIT

Prof. Alberto Malatesta, Secretary General Italian branch
of International Law Association

Presentation of the joint research by the Italian branch of
ILA and the Academic Center of UNIDROIT on soft law in
international law and governance