

**“Enabling environment for rule-based business, investment
and trade”**

**Side event in conjunction with the eighth session of the
Open Working Group on Sustainable Development Goals
(New York, 3 -7 February 2014)¹**

Date: 6 February 2014

Time: 1:15 pm to 2:45 pm

Place: Conference Room 1, the Conference Building, the United Nations
Headquarters

Speakers:

Professor Roy Lee

Permanent Observer for the Asian-African Legal Consultative Organization (AALCO) to
the United Nations

Ms. Judit Arenas

Deputy Permanent Observer for the International Development Law Organization
(IDLO) to the United Nations

Dr. Louise Kantrow

Permanent Representative of the International Chamber of Commerce (ICC) to the
United Nations

Mr. Renaud Sorieul

Secretary, United Nations Commission on International Trade Law (UNCITRAL)

Mr. Edric Selous

Director, Rule of Law Unit, Executive Office of the Secretary-General, United Nations

Mr. Michael Schoell, Chair of UNCITRAL at its 46th session, moderated the event.

¹ The side event was organized pursuant to the mandate given by UNCITRAL at its 2013 session to its Bureau and secretariat (A/68/17, para. 275). UNCITRAL has on numerous occasions formulated its position on the importance of the promotion of the rule of law in commercial relations and the sound commercial law framework, in particular in the context of development, conflict prevention, post-conflict peacebuilding, durable peace, rule of law and governance (see e.g. A/64/17, paras. 412-420; A/65/17, paras. 313-336; A/66/17, paras. 302-320; A/67/17, paras. 199-223; and A/68/17, paras. 278-291). The General Assembly endorsed UNCITRAL views on these issues (resolutions 63/120, para. 11; 64/111, para. 14; 65/21, paras. 12-14; 66/94, paras. 15-17; 67/89, paras. 16-18; and 68/106, paras. 12-14).

Context

The eighth session of the Open Working Group on Sustainable Development Goals focused on conflict prevention, post-conflict peacebuilding and the promotion of durable peace, rule of law and governance. The subject discussed during the side event was of direct relevance to the themes of the session and to sustainable development goals and its financing in general. It dealt with an enabling environment for rule-based business, investment and trade as relevant for conflict prevention, post-conflict reconstruction and the promotion of rule of law and governance in the commercial relations and broader contexts.

It was organized on the understanding that, without an enabling environment for rule-based business, investment and trade, the world cannot tackle development challenges many of which, such as joblessness, youth unemployment and the shortcomings of a large informal economy, are deeply rooted in economic factors. The High-level Panel of Eminent Persons which advised the Secretary-General on the post-2015 development agenda, highlights these challenges. It recommends a new global development agenda that includes goals and targets towards creating jobs, sustainable livelihoods and equitable growth (goal 8) and a global enabling environment and catalyzing long-term finance (goal 12). It acknowledges in this context the need for an enabling business environment and boosting entrepreneurship and for reforms to encourage stable long-term private foreign investment.

The Secretary-General agreed with these recommendations and views. His report “A Life of Dignity for All” calls for a robust framework for sustainable development finance including both private and public funding and for international efforts needed to create an environment conducive to business (A/68/202, para. 100).

The Open Working Group on Sustainable Development Goals looks for transformative changes and identified the environment conducive to private investment and entrepreneurship as such (A/67/941, para. 72).

The sound regulatory framework for business, investment and trade is a building block of such environment. Without underestimating the importance of other building blocks for the environment conducive to private investment and entrepreneurship, it deserves special attention of global and local leaders, separately from issues of inter-State trade policies, criminal law and other public law issues.

The side event focused on the establishment of enabling environments for rule-based business, investment and trade as critical elements for conflict prevention, post-conflict reconstruction and the promotion of rule of law and governance in commercial relations and broader contexts. Speakers discussed hidden barriers to private investment, entrepreneurship and trade arising from conflicting and/or outdated local regulations of commercial matters and explained why it is important in the context of sustainable development to strive for harmonization and modernization of commercial law.

The main outcome message of the side event

- Commercial law is a powerful player in addressing sustainable development challenges but often neglected at the local and international levels with the result that the local capacity to continually engage in commercial law reforms at the country level and in a coordinated fashion in the rule-formulating activities of regional and international bodies is deteriorated. There are often no local counterparts with whom international experts could hold a meaningful dialogue on the need to achieve harmonization and modernization of local commercial law framework.
- That the need exists is without doubt. This is universally applicable to all countries. Business practices evolve and affect the entire globe. This dictates the need to continuously monitor them and their economic and social impact under local conditions. This also necessitates regulating them properly in a harmonized and modernized way in order to avoid hindrances to private investment, entrepreneurship and trade and to sustainable economic and social development.
- Outdated commercial law framework is a major impediment to development. It creates barriers to formalization of the informal sector of economy, inclusive finance, innovation, new economic opportunities, achieving public expenditure efficiency and savings, speedy recovery from financial crisis and other benefits. In the end it does not allow States to achieve effective mobilization of resources for sustainable development (tax revenues, private investment and development assistance). Its modernization is therefore necessary.
- It is also necessary to eliminate those divergences arising from the laws of different States in matters relating to international commerce that create obstacles to the development of cross-border commercial relations (because of increased commercial risks, transaction costs and other reasons). This is achieved through harmonization of commercial law of different countries.
- Commercial law, depending on how one drafts it, can promote local productive capacities or make one's local market less competitive; it can create practical mechanisms to ensure accountability or may only give impression that it does so; it can create market incentives for corporate responsibility and good governance or lead to irresponsible, fraudulent or other undesirable activities; it may be an effective deterrent of conflicts triggered by economic factors by addressing their root causes or may trigger conflicts by creating environment where favouritism and corruption flourishes and inequalities are reinforced.
- Governments must be equipped with knowledge and tools to utilize this powerful tool properly for sustainable development. Without continuous attention of global

and local leaders to this field, the envisaged potential of the private sector to contribute to sustainable development cannot be fully realized.

- Continuous attention to this field is required since unlike other areas of law, commercial law constantly evolves in response to new business practices and local and global challenges. This necessitates continuously building local capacity to engage in commercial law reforms to keep pace with developments in finance and commerce and address sustainable development challenges.
- International rule-making in this field can be of assistance to States in this respect. It has proved instrumental in reconciling interests of various stakeholders operating at the international and local levels in a balanced way, in providing readily-available standards that are scrutinized by States, IGOs and NGOs from global and local perspectives, from perspective of business, investment, local and cross-border trade and socio-economic development, and in building the required local capacity of States.
- But there should be sufficient local expertise capable of drawing on readily available international standards, tools and expertise for carrying out commercial law reforms at the country level.
- There should also be sufficient local expertise capable of coordinating the position of a State in regional and international rule-formulating bodies in order to contribute properly to the rule-formulating activities of those bodies and to avoid conflicting rules and interpretations.
- States must therefore aim at building their local capacity to continually engage in commercial law reforms at the country level and in a coordinated fashion in the rule-formulating activities of regional and international bodies.
- This message should come clearly across any post-2015 development agenda.
- This will be in line with, among others, the Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels of September 2012 (General Assembly resolution 67/1), in paragraph 8 of which States recognize the importance of fair, stable and predictable legal frameworks for generating inclusive, sustainable and equitable development, economic growth and employment, generating investment and facilitating entrepreneurship, and in that regard commended the work of UNCITRAL in modernizing and harmonizing international trade law.