



**UNIDROIT Foundation**  
**Treaty Project, Planning Session**  
**Rome, 15 February 2024**

Foundation 02/2024

**Planning Session on the Implementation of and Compliance with International  
Commercial Law Treaties Project**  
**Report**

1. A planning session on the Implementation of and Compliance with International Commercial Law Treaties (Treaty Project) took place in Rome and online on 15 February 2024. For the agenda and the list of participants, please see [Annex 1](#) and [Annex 2](#), respectively.

**Item 1: Opening of the Session**

2. The Directors of the Cape Town Convention Academic Project, *Professor Jeffrey Wool* (President of the UNIDROIT Foundation and Secretary-General of the Aviation Working Group), *Professor Louise Gullifer* (Cambridge University) and *Professor Ignacio Tirado* (UNIDROIT Secretary-General, represented by UNIDROIT Deputy Secretary-General *Professor Anna Veneziano*), opened the session and welcomed all the participants.

**Item 2: Project Summary and Introduction**

3. *Professor Wool* and the *UNIDROIT Secretariat* gave a presentation (see [Annex 3](#)) based on the Discussion Paper that was prepared by the *UNIDROIT Secretariat*. *Professor Wool* explained the background of the Treaty Project, the objectives and the work achieved so far. It was noted that, while the Project was inspired by issues encountered in the Cape Town Convention and identified through the Compliance Index, which was developed by the Aviation Working Group to assess all aspects of compliance by the States Parties thereto, the subject matter and problems faced were thought to be of general applicability in the context of internal commercial law treaties.

4. The Project is organised under the auspices of the Cape Town Convention Academic Project (CTCAP), a joint initiative between the University of Cambridge and UNIDROIT, with the Aviation Working Group as its founding sponsor. The Project is supported by the UNIDROIT Foundation and Aviareto.

5. *Professor Wool* further explained the main objectives of the Project: (i) researching and exploring the different elements of implementation and compliance, (ii) raising awareness of challenges encountered in implementation and compliance, and (iii) developing guidance on and best practices for dealing with implementation and non-compliance problems. A key feature will identify, assess and address through best practice guidance different sources of non-compliance (a term which includes the consequences of non-implementation). A number of actions and approaches at various levels were identified as the main practices and approaches used by the international community to facilitate compliance ("compliance-facilitating elements").

6. Given the limited number of commercial law treaties, and to enrich academic thought and work in other fields of treaty law, the Project will explore approaches which the international community had taken to incentivise and enhance treaty implementation and compliance in various treaty areas. For this purpose, the Project would map a broad scope of treaty systems to highlight best practices in facilitating, tracking, monitoring, and enforcing States Parties' implementation of and compliance in these fields: include Intellectual Property (IP) treaties, trade and investment treaties (e.g., Bilateral Investment Treaties - BITs), transport treaties, environmental and climate change treaties, human rights treaties, and law of the sea treaties. A comparative law type approach would be followed. The results will be applied to determine impact in the field of international commercial law treaties.

7. *Professor Wool* added that, in the context of an international commercial law treaties, implementation and compliance would be examined in light of a number of major questions that had been identified for the purpose of the Project. The questions regarded the meaning of "implementation and compliance", methods for measuring them, main sources of non-compliance, and how they could be addressed. To set a basis of the analysis, a detailed Questionnaire had been developed to reflect those questions and serve as a guiding framework. The Questionnaire will be shared with experts of the different target areas - who would be included in a working group for the Project. It was noted that the main objective of this planning session was to discuss the scope of the Project, identify the target areas and determine the approach to be adopted.

### **Item 3: Open discussion on the scope, target areas and approach**

#### Intellectual Property treaties

8. *Professor Gullifer* referred to *Professor Grosse Ruse-Khan* and asked him for comments on the structure of the Project and the relationship between Intellectual Property and the commercial law area under examination.

9. *Professor Grosse Ruse-Khan* discussed various aspects of compliance in the area of Intellectual Property (IP) treaties, stressing the importance of understanding stakeholders' intentions and expectations, and the role of dispute settlement in treaty interpretation. He identified key issues of the IP treaties which could be of interest for this Project, including issues related to the concept of compliance, the role of stakeholders in indirectly influencing treaty implementation, dispute resolution, commitments, and enforcement of private rights.

10. *Professor Grosse Ruse-Khan* focused on the concept of compliance, examined both from the standpoint of technical, legal compliance and from the commercial actors' perspective in relation to the satisfaction of their expectations. With the WTO TRIPS agreement as an example, it was noted that treaty interpretation was a critical aspect in ensuring compliance. Ambiguous treaty terms should be viewed not only as an "insufficient clarity in treaty provisions" leading to non-compliance, but also as indicative of a lack of expectations. *Professor Grosse Ruse-Khan* discussed how constructively ambiguous treaty terms could lead to dissatisfaction among stakeholders despite technical compliance or their involvement in the negotiation process. *Professor Wool* agreed that ensuring clarity in treaty provisions was crucial for meeting parties' expectations, emphasizing that insufficient clarity might not necessarily equate to non-compliance but could be associated with unmet expectations.

11. *Professor Grosse Ruse-Khan* noted that akin to the function of an open contract in economics, the TRIPS allowed for contracts where terms were crafted to allow parties to converge on a particular terminology while still retaining their positions. This would necessitate the involvement of an independent arbiter to interpret the actual meaning of the terms, often through dispute settlement mechanisms. *Professor Grosse Ruse-Khan* then emphasised the importance of reflecting

stakeholders' (commercial actors') intentions and expectations in treaty terms and the extent to which the treaty language allowed for a range of different interpretations. The latter would require tools for treaty interpretation and dispute resolution mechanisms.

12. *Professor Wool* noted that ensuring clarity in the negotiation process was important to meet the expectations of the parties, while at a later stage clarity could be achieved through mechanisms for authoritative interpretation.

13. In addition, *Professor Grosse Ruse-Khan* suggested exploring the concept of non-violation complaints established within the WTO framework (Article 23 GATT) as potential remedies for situations where treaty terms failed to yield expected benefits for industries but without triggering treaty violation. The outcome was to rebalance the initial concessions between the States, in light of the legitimate expectations while examining the issue from the perspective of commercial actors. *Professor Gullifer* expressed interest in the concept and queried whether looking into the area of WTO law would be beneficial to the Project. *Professor Grosse Ruse-Khan* replied that it was worth exploring the remedy of non-violation complaints and proposed to consider its applicability in other commercial or treaty contexts.

14. *Professor Grosse Ruse-Khan* further referred to the absence of direct involvement of stakeholders in treaty negotiations, particularly in IP treaties, as opposed to investment treaties. In addition, *Professor Grosse Ruse-Khan* discussed that treaties like TRIPS entailed commitments that compelled States Parties to make changes in their domestic private laws rather than in public law regulations, and that TRIPS imposed obligation of outcome, offering flexibility to states as to how to implement the treaty. On the contrary, more specific free trade agreements did not leave room for domestic implementation. For example, under the US-Australia free trade agreement, benefits would be granted by the US only after ensuring domestic implementation in Australia.

15. *Professor Grosse Ruse-Khan* then focused on the challenges associated with enforcing IP rights, highlighting the complexities of requiring a state to establish enforcement mechanisms and resources, and the impact on its sovereignty. The importance of states having a vested self-interest in the treaty was highlighted as an enabler of ensuring compliance, particularly in areas of private and commercial law. This was particularly evident in the US-China Phase One Agreement, a post-TRIPS agreement, which included concrete obligations. *Professor Wool* elaborated on the relevance of a remedy for non-compliance and the relationship between international obligations and national laws, particularly during the treaty creation stage, emphasising the importance of anticipatory measures for addressing potential issues. *Professor Wool* then highlighted the role of education and awareness in promoting compliance, from experience in the Cape Town Convention.

16. *Professor Wool* concluded that, following the discussion, it was evident that there were many similarities between the IP and the general commercial law areas under examination.

#### Case Study on the UNIDROIT Cultural Property Convention

17. The discussion shifted to the Case Study on the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects ("Cultural Property Convention"). *Ms Kostoula* provided an overview of the Case Study and explained that it was developed based on a number of questions. This exercise helped to understand the key provisions and elements of the Convention, and what practices worked or were less successful in relation to implementation and compliance. It was highlighted that diplomatic cooperation played an important role in the Convention, while the limited monitoring mechanisms, for example, the establishment of a special committee, were less effective.

18. *Ms Schneider* provided an explanation of the depository's role in the implementation process, particularly regarding the compulsory declarations required upon ratification of the Convention. *Ms Schneider* expressed enthusiasm about the Project and underscored its significance in offering

guidance. She suggested further exploring cultural property treaties as they fell within commercial law due to the transactions involved. It was added that many of those conventions established bodies to monitor the operation and implementation of the conventions, citing the examples of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and the 1995 UNIDROIT Convention. However, Ms Schneider noted the infrequency of meetings due to the absence of set timeframes. Particularly in the case of the UNIDROIT Convention, the special committee established under Article 20, had convened only once at UNIDROIT's request. Despite expressing the need for more frequent meetings, States Parties never formally requested them, although they were entitled to do so. Ms Schneider also mentioned the lack of industry involvement in the consultation process for the UNIDROIT Convention, although collaboration with the art market had ensued in subsequent years.

19. The difficulties in monitoring the implementation of the Convention were then discussed. Professor Wool inquired about existing cases on the application of the Convention. Ms Schneider clarified that while court cases often focused on concepts and definitions, including that of "cultural property" itself, other cases of Convention application were typically handled through diplomatic channels and thus not reported to UNIDROIT or the depository.

#### Target treaty areas

20. The participants then discussed the relevance of other treaty areas (target areas). It was noted that IP treaties and Bilateral Investment Treaties (BITs) were the closest ones to the commercial law area examined under this Project; particularly, the development of BITs was highlighted since they gradually incorporated dispute resolution mechanisms and the structure of arbitration.

21. Professor Veneziano referred to transport treaties and noted the significance of incorporating maritime treaties into the discussion, potentially citing them as valuable examples of less successful compliance practices. Professor Wool highlighted the similarities between transport, IP, and trade treaties, particularly in cases where an international organisation was involved, such as under the Chicago Convention on International Civil Aviation.

22. Mr Brydie-Watson reflected on the selected treaty provisions provided in Annex 2 of the Discussion Paper. It was noted that the monitoring mechanisms were worth exploring further since they facilitated understanding whether a State Party had implemented its obligations under the treaty. He added that the Cape Town Convention did not contain such mechanisms as it was implied that the States Parties had already taken the necessary steps to give effect to the treaty under their domestic laws. Professor Wool added that the Cape Town Convention Compliance Index allowed for the creation of informal communication channels to enhance compliance of those States Parties that scored low.

23. Professor Wool and Professor Gullifer discussed the idea of incorporating a consultation process to ensure treaty implementation. Professor Wool noted that including such provisions in the treaties would increase pressure on governments to comply and could yield more results than adding dispute resolution mechanisms, such as arbitration. Professor Wool emphasised the necessity of making it clear in the treaties that, even in private or commercial law treaties, there existed an international obligation. However, the participants acknowledged the challenges of dealing with political risks and countries not prioritising compliance.

24. The participants then discussed the role of institutions in ensuring compliance with international treaties. It was agreed that having institutional bodies had proved to be a successful practice to monitor compliance, as evidenced in the WTO case. Professor Veneziano elaborated on the role of establishing an institutional body, such as an international organisation, not only for monitoring compliance but also for interpretation or with a role in the review process. Professor Wool

highlighted the case of ICAO, which had been successful in promoting a culture of compliance among its members. *Professor Wool* further considered the potential for the depository of a treaty to play a more active role in interpretation and dispute resolution, with functions, for example, to issue authoritative interpretations.

#### **Item 4: Next steps and closing remarks**

25. Given the academic nature of the Project, *Professor Gullifer* suggested using the Cambridge infrastructure (preferably the Lauterpatch Centre), both as a location of the meetings and as an institutional home, without moving the Project's management. *The CTCAP Directors* and the participants embraced the idea. It was further agreed to engage students from Cambridge as research assistants to assist with preparing the responses to the Questionnaire and conducting research in target areas.

26. The planning session concluded with a note on the importance of the Project, considering the lack of concrete guidance in relation to compliance in the commercial law area, despite its growing significance. This would be beneficial to future treaties. It was also agreed to further develop the Project and build on the experience from other treaty areas.

27. *The CTCAP Directors* summarised the next steps for the Treaty Project:

- 1) Further developing the Discussion Paper
- 2) Revising the Questionnaire based on comments received
- 3) Sharing the updated Discussion Paper and Questionnaire with experts from the different target areas
- 4) Identifying experts from each target area
- 5) Identifying one or more treaty compliance generalists
- 6) Creating a working group for the Treaty Project

28. It was agreed that the first Workshop would be organised in January 2025 in Cambridge.

29. *The CTCAP Directors* thanked all the participants for their time and for the fruitful discussions.

**ANNEX 1**

**Implementation of and Compliance with  
International Commercial Law Treaties  
Project**

An initiative under the auspices of the Town Convention Academic Project

Project Leads:



Founding Sponsor:



Supported by:



**Planning Session  
on Implementation of and Compliance with International Commercial Law  
Treaties  
(Treaty Project)**

**Draft Agenda**

**15 February 2024**

*UNIDROIT, Via Panisperna 28, 00184, Rome,  
and online via Zoom*

*\*\* all times are in Central European Time (CET), UTC +1) \*\**

Chairs: Professor Louise Gullifer, Professor Jeffrey Wool, Professor Ignacio Tirado (CTCAP Directors)

15:00 - 15:05	Opening of the Session <i>CTCAP Directors</i>
15:05 - 15:15	Project summary and introduction <i>Jeffrey Wool &amp; Theodora Kostoula</i>
15:15 - 16:50	Open discussion on the scope, target areas and approach
16:50 - 17:00	Closing remarks <i>CTCAP Directors</i>

**ANNEX 2****List of participants**

1. Jeffrey Wool (UNIDROIT Foundation, Aviation Working Group)
2. Louise Gullifer (University of Cambridge)
3. Arnold Agaba (Aviation Working Group)
4. Henning Grosse Ruse-Khan (University of Cambridge)
5. Anna Veneziano (UNIDROIT)
6. Marina Schneider (UNIDROIT)
7. William Brydie-Watson (UNIDROIT)
8. Myrte Thijssen (UNIDROIT)
9. Theodora Kostoula (UNIDROIT)
10. Benedetta Mauro (UNIDROIT)
11. Ilaria Bortot (UNIDROIT, intern)
12. Ruida Chen (UNIDROIT, intern)