

# The United Nations and the European Union: An Ever Stronger Partnership

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## SESSION 1: Towards a Structural Cooperation between the UN and the EU

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**Dr. Omar Bakhet**

First of all, let me wish you a very good day, it is a very lovely day in Brussels and we will be in this room. I hope that we will use the time properly in order to advance the discussions and the debate that is going on concerning what is -in the UN's point of view- a very important relationship, a relationship that is strategically very critical at this time in our history.

I would also like to thank the organisers for inviting us, the UN as a whole, I am not alone here, there are some colleagues from other parts of the UN system, plus the UN University and therefore, on behalf of all of us, we are very grateful to the organisers for having us here.

Speaking about the EU-UN relationship, I think I will go a little more into details concerning some of the issues touched upon earlier by the keynote speaker. The EU-UN relationship did not start in the last two years or in the last few years, the relationship has been going on for more time. Yet it has been articulated, I think, in the last two years in a more predictable and strategic manner with a plan of action and a framework of cooperation that was not there before. We started this in the year 2000, when the Secretary General issued a Communiqué. First there was a Communiqué from President Prodi on the UN, and there was a response to that by the Secretary General that led to a more intense discussion, that eventually led to what we call the famous Patten Communiqué on multilateralism that came out last year. I think those Communiqués set up what I would call the strategic architecture for the strategic relation between the two institutions and they outline the broader issues on which the UN and the EU work together in a more predictable and organised manner. In the past, the relationship existed, and I am sorry to say that it was a relationship that was based on a contractual basis, where the UN was seen as a subcontractor to implement the Commission's programmes rather than to be a strategic partner. I would like to stress that it is a very important shift in the relationship, which we in the UN appreciate very much.

What are the main elements that guide us nowadays to build and reinforce the relationship? First of all, the Communiqué that was issued, as I said earlier, and as the Ambassador before me mentioned, goes a little bit beyond what was agreed upon earlier and defines areas where the EU and the UN would work together, and where the EU envisions ways to become more effective in its relationship with the UN. And we hear many people ask '*was this Communiqué implemented or not?*' We do believe it is in a full swing of implementation because when we look today at all the different instruments of the whole regional agreement the EU is negotiating, the matter of multilateralism becomes important.

Secondly: the relationship based on the structural relationship between New York and Brussels. We have instituted an annual visit of the Secretary General to Brussels. Unlike previous visits, the visits of this year and the future visits will be based on addressing the Parliament, speaking with the Commission and colleagues of the Commission and meetings

with the Council and its Presidency. There is also a substantial element related to the last visit of the Secretary General, Mr. Kofi Annan, when there was a discussion based on issues, international conferences, the millennium development calls, crisis management, and some of all these issues that are in the making, as they become more important in setting up the agenda of the SG visit. It would be followed, two or three months later, by the visit of the Deputy Secretary General in order to discuss the next steps in implementing all the agreements that have been reached through the visits of the Secretary General. And we have seen that two to one and a half months ago, Madame Louise Fréchette, the Deputy Secretary General was here, met with the Parliament, met with the Council, met with the Commission and many of the issues that had been raised in the previous meeting of the SG have now taken a shape and a life of their own to be implemented. I think that, also from the EU side, we have the traditional visit of the Troika to the SG in New York, yet we have also been encouraging the visit of senior EU Parliament Members to the UN, not only to meet with the SG, but to meet with the partners of the Secretariat and the UN Agencies who are also present in New York and other parts. Just to illustrate the intensity of the contact, in the year 2003 we had 89 senior UN officials coming to Brussels. And those visits were not from Headquarters, most of the visitors were special representatives of the Secretary General visiting Brussels in crisis situations. They had intensive discussions with the council, and I'm very pleased to note that my good friend Jim Cloos is here. He has been a key player from the council's point of view to help define the priorities in this relationship. There are three or four key pillars in the architecture of what we are trying to do. The first is the concept of crisis management, and I don't want to take the floor from Jim, he will go into the details of the matter. From our perspective, it is a very important structure to have been set up between the two institutions. It is also agreed that it meets twice to three times a year. We met eight weeks ago in New York, there is a strong team from the Council and from the Commission. The next meeting will take place in Brussels, either in July or early September, we are still working on the dates. Then, this first discussion of the working group led to the drawing up of a plan of action on the Communiqué that has been sent by Kofi Annan and the Italian presidency last year. The second aspect of this relationship is the desk-to-desk dialogue. And this is the dialogue between our desk offices in the department of political affairs, and our special representatives or resident coordinators in the field, with the staff of the Commission and the Council. It is led by Relex and the focus of the discussions is conflict prevention and comparing information on ongoing crisis situations of which we foresee that they will become mayor problems to all of us. The idea of this initiative is to enable desks from the two organisations to meet regularly, know each other and provide follow-up. I think that after the last visit we are very pleased to report to you that everything we discussed in the last meeting is actually being implemented, both for crisis-management and desk-to-desk dialogue. These two important initiatives touch the aspect of the Secretariat activities of the UN with the EU, i.e. the SG's Office, the department of Political Affairs, the department of Peace-Keeping and also the department of Humanitarian Affairs within the framework of the Secretariat.

The next part of the ongoing relationship, it has been there for some time now, is the one between the Funds and Programs and the European Commission. As I said earlier, this relationship in the past was based on subcontracting. I am not trying to devaluate it, but it was about implementation of specific programs, or in the case of UNHCR or WFP, the Directors will go further into that, about areas concerning more mandatory issues, such as asylum issues. So, there was a policy dialogue, but there was not a systematic policy dialogue. What we wanted to have is basically a dialogue based on the global agenda. It is not a question of funding, but it is equally important for us that the EU embraces the Millennium Development Calls, that there is follow-up on trade and WSSD and other mayor initiatives. They have been

agreed upon, but we wanted them to be translated into both the mainstream Commission work, and –if possible- where it is possible, joint initiatives. And the Commission and ourselves thought the best way to operate is to start a process of strategic partnership. At present there are ten of these partnerships in negotiation, ten UN agencies, some of whom are here today: WFP and HCR, Unicef, ILO and others. Those are allowing us now to agree which are the areas where the Commission would help the UN or vice versa, and work together on them to implement them. Very recently we had a specific meeting on the Millennium Development Calls, we had a team from the UN New York, led by Mr. Okambo, the Under Secretary General for the Department of Economic and Social Affairs. We agree in a process where the UN and the Commission are working together on the implementation, leading up to working on specific countries in the field. The UN is preparing around 100 country reports for the next summit and we have agreed out of these countries that the Commission would be working together with us.

To illustrate our strategic thinking a bit more, I think Europe and the European institutions are extremely important to what we are doing. The EU contributes almost 56% of global ODA flow, and contributes 37% with member states of the total budget of the UN. Therefore it is a very important partner from financial perspectives. Yet, I don't think it is the only matter of importance, it is equally and more important in the current affairs for the EU to play an important role for peace and security. I think work is now in progress between the Council and the Commission, to put forward suggestions to the panel work. We also hope some members of the panel will be coming to visit Brussels through our mechanism. There have already been discussions between the European Members of the Panel and the European Institutions, but we would like to take it a little bit further and have it within the system discussions.

Last point: the importance of maintaining the contacts between the two institutions. That is something that we are very much encouraging to all our Senior colleagues who are in key hot spots in the world. We had the Special Representatives of Congo visiting us twice or three times, we had the Special Representatives of Liberia and Sierra Leone coming over, and we are foreseeing a team from Iraq, that would be visiting Brussels in time. We are also foreseeing visits from people from Afghanistan, and other regions. We support these visits to maintain the contact, not only for briefings, but also to place them in the context of the crisis management discussions, of what we do in the strategic partnership and making sure that all these discussions between our two headquarters also reflect our field realities and that we work together at the field level. We are in the process of selecting a group of countries, mostly program countries, where the Commission and the UN work in what we call a review of programs: establishing indicators and see where harmonization can take place between our respective initiatives. I will stop here, but I would be very happy to answer any questions, and some of the issues I wanted to raise, will be raised by my two colleagues later this morning, and also by Jim Cloos from the Council.  
Thank you very much.

SPEECH OF Mr. Jim Cloos, Director at the DG of the Council of the EU.

**Mr. Jim Cloos**

Let me first make some introductory remarks. The first one is that if you listen to Omar Bakhet you realize that there has been a sea change in our relationship with the UN over the last 3, 4 or 5 years. This sea change is illustrated by the visit of Kofi Annan to the three institutions, a hugely successful visit, where Omar Bakhet played a major role in its preparation. You also see it in the very regular visits which have been carried out by Louise Fréchette in Brussels, and those visits have become far more focused and operational than before. Initially they were more like diplomatic exchanges, to be honest, we also had some trouble sorting out who should talk about what to them: the Commission, the Council Secretariat, the Presidency, all the usual problems. I think we have gone a long way getting over that and presenting to the UN what we should present: a broad vision of the European Integration. That is why I am very pleased that Prof. De Kuijper is here as well, and we will talk about the Commission aspect because the relationship with the UN covers all the various aspects: the first, second or third pillar. A good illustration also of the near automaticity of our continuous relationship with the UN, is the fact that the new Counter Terrorism Coordinator, who many of you know, I think, had the reflex that the first trip outside of the EU area was to Washington and to New York. He went to New York last week in order to meet the Chairman of the CTC, and he talked to the Chair of the Sanctions Committee of the Security Council Resolution 1267. So, I really think that things have improved, that we are developing a very fundamental relationship with the UN.

Now, let me look at our relationship mainly from the angle of crisis management because that is the area where things have changed most. I have seen on the programme that my good friend Patrick Namer will talk to you about it later on, so take it that I am talking theory, he is talking practice. He actually knows what he is talking about. I only know from reading about it.

I would look at the problem of our relationship from three angles, first of all, the general EU philosophy. I will be brief on that, but I think it is important. Secondly, the EU record so far, but more importantly, the third part, is the way forward in our relationship.

First of all, a quick reminder of the EU strategy. The EU itself is a structure for peace and unity and the EU itself is in a way a documentation of what you can do when you adopt a multilateral approach and an approach based on rules and law. Enlargement is a way of extending this zone and I think it is hugely successful. We have always proclaimed that we were in favour of multilateralism. We have always said that the UN was very important, but very often, to be fair, this has remained a rather theoretical approach, it has been, not really lip service, but it wasn't operationally followed. What we are in the process of doing now, is to actually implement what we've been saying. And this centres around the whole concept of effective multilateralism as defined in the European Security Strategy, adopted in December last year. The philosophy behind it is to further multilateral solutions, but the emphasis is very much on the effectiveness: if you just say that you're in favour of multilateralism, of international law, if you don't give yourself the means to implement it, then you are going to get stuck, and you are not going to get very far. That means, of course, that we and our member states, who are UN member states, have to do everything possible. They have a responsibility to help the UN reform itself, to help the UN become more and more efficient. That is the first leg of it, and in that respect we have just worked out a contribution to the panel set up by Kofi Annan, thinking about future challenges, threats and changes. This panel will come up, I hope, with interesting solutions by the end of this year.

The second part, is the part I would like to dwell on a bit further. Our own contribution to it as a EU. What can we do to provide services to the UN? What can we do, mainly in crisis management, for the enormous task that falls on DPKO. If you look at the various peace-

keeping operations now, you see that there will be a real inflation on them, mainly in Africa. What can we do to help the UN deal with all those problems? This is very important because the EU has been adamant about the primacy of the UN Security Council for maintenance of Peace and Security in accordance with the UN Charter. And that is incidentally why our member countries contribute about 40 percent to the peace-keeping budget. As I said, if we want multilateralism to be effective, we have to give multilateralism teeth. And we also have to be able to cover the whole range of conflict prevention and crisis management. The EU, like I think the UN, favours a very broad definition of security, which implies that you not only attack the symptoms, but also the roots. And it is one of the mayor debates we have with our American friends. As far as crisis management is concerned, I would maybe start with a *boutade* and say that we have been doing crisis management *comme Monsieur Jourdan faisait de la prose*, for a long time. Because what we do, certainly in terms of enlargement, is crisis management and is security enhancement. What we do with the Cottonno agreements is crisis management and enhancement of peace and security in the world. What we do in our numerous agreements with third world countries goes in the same direction. I see this as part of the overall furthering of peace and security in the world. We also know that for a long time the Commission or, I should say, the European Community, has financed more than 1000 specialists from member countries in civilian missions in the world, and more than 2500 experts from member countries in public administration projects. Those are quite important figures and that also is crisis management.

What is new, I think, is the political priority we are now giving to building our own capacity for direct management of large-scale operations. This implies of course that we have to get the development of our own ESDP right. And I won't go into the details but over the last European Council, starting from Cologne in 1999 we have consistently built up our internal structures and capabilities. We could do better but I think it is already relatively impressive. And what is really important is that we have started proceeding from theory to practice. We have launched 4 EUPM operations in Bosnia, Concordia, Proxima in the former Republic of Macedonia, Artemis of course in the Congo and very soon we'll take over U-FOR. What is interesting about those operations is that two of them have a direct link to the UN because the European police mission in Bosnia is a follow-up to the UN IPTF mission. Artemis was a bridging operation allowing the UN peace keeping force in Congo to beef up its strength, to get more troops in, with better equipment. So, in all those operations we have really acquired direct and operational knowledge of how the UN works and they have acquired knowledge of how we work and we're in constant contact.

How are we going to take this further? First of all, I think I may already have mentioned this, in terms of crisis management we adopted quite an important declaration on the 24<sup>th</sup> of September last year, which spelt out in rather un-bureaucratic terms the various things we should be doing together. And those various things are planning, communication, lessons learnt and training for which we have created a steering mechanism.

We had our last meeting a number of weeks ago, a whole day meeting, where we really went into all the missions in detail. What we are doing now is that we've exchanged contact points for all of these various issues and we are organising follow-up missions, we are shortly going to have a follow-up mission meeting of experts on African peace and security. And I am sure that Patrick Namer can talk in greater detail about the idea we have for African peace-keeping and maybe Prof. De Kuijper can say something about the African peace facilities of the 250 million which will come from the European Community budget in order to prop up African peace keeping capabilities. I think it is a hugely important thing. We are also going to organize expert meetings on planning and on training. You have to train peace-keepers, you have to train soldiers who go to missions, you have to give them training in international law, human rights, humanitarian law, how to behave with civilian populations and all that, it is

hugely important. The UN has a need for this, and we too, why not put our heads together and try to create synergies. Or planning, it is very important. The UN wants to know what we can offer. We have to think about various possible ways of helping in crisis management. One is like Artemis, a bridging operation: we say, you have a problem on the ground and can't mobilize UN troops quick enough for various reasons, we are there, we send in troops, we stabilize the situation, but then we go out again and you take over. This is what happened with Artemis. The UN is very interested in another concept as well, which we are looking at, but we haven't really decided yet how to tackle exactly. That is the question of providing over-the-horizon-forces. There is a UN mission, and some member countries would be ready to provide over-the-horizon forces, which is another possibility of doing things. Then, of course, you have different issues to be discussed, e.g. who provides the capabilities. I could see the EU, in the longer term, becoming a kind of clearing house, whenever the UN needs troops, but also for national capabilities, because don't forget, we don't have troops, our member countries have them. And they have to provide them. If there is a UN operation as such and there is no ESDP operation, then our member countries will be invited to provide troops. We could have some kind of clearing house mechanism within the EU, it is something we could develop, but then we also have the possibility to take over an operation, or part of it as an EU operation. We are working on all those things, and I think they are very concrete.

I will not go into the conflict prevention debate, I think Omar has mentioned it: we, the Council Secretariat and the Commission, are in constant contact with our UN friends, with DPA, we look at early warning, we exchange information on our watch-list exercise in the EU because it is immensely important that not only you fight a crisis but that you try to foresee and prevent it, and you try to bring to bear all of the instruments that are to your disposal in order to prevent crises from happening. In that context the exchange of information is important and very tricky because of classification and because of the different nature of our organisations. We are working to find a way of doing this, but we have to be careful because as far as our citizens are concerned, the classified information is member countries' property. And some of that information cannot be given outside of the union. But we are working on this, there is an exchange going on between Javier Solana and the UN about this, we have constant contacts between the two sides and I think we'll take this further as well. I think I will stop there to leave time for discussions, I know there are many other things to be said but I wouldn't like to monopolize the floor for two hours.

SPEECH OF Prof. Peter Jan Kuijper, Director at the Legal Service of the European Commission, and visiting professor at the University of Amsterdam

**Prof. Peter Jan Kuijper**

Thank you.

Ladies and Gentlemen,

With your permission I will begin with a little anecdote. It's the last week of October 2003, imagine you're the legal adviser of Brazil in the 6<sup>th</sup> legal committee of the UN General Assembly and you take part in the discussion on the yearly report of the International Law Commission on the subject 'responsibility of international organisations', which is in the process of being codified now by the International Law Commission. The following scene plays out before your eyes and ears: the chair gives the floor to Italy, whose representative

says: “Mr. Chair, I have the honour to speak on behalf of the EU, the acceding countries, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia, the associated countries Bulgaria, Romania and Turkey, align themselves with this statement”, and the person goes on to speak and then, after 5 minutes, he announces a change behind the name plate, he says “Mr. Chair, given the specific subject matter of our discussion today, ‘the responsibility of international organisations’, and with your consent, I would like the remainder of the statement to be continued by Mr. Kuijper. And then you see someone descend from the row of observers above the Italian delegation’s place and he sits in the place of the Italian delegate and he continues to speak, and you suddenly realize there’s a change in the accent of English and that it’s probably no longer Italian but you concentrate on the substance and you provisionally conclude for yourself that he must be European.

This practical example shows two things:

That the representation of the EU/EC, and I will speak about the EU/EC as a sort of amalgam of the first and second pillar, is difficult to understand for others. I will speak about the UN today in a broader sense than just the UN properly speaking, including the specialized agencies. So the representation of the EU/EC in the UN is difficult for others to understand at present. And also, you realize, if you pay close attention, that representation is not just decided internally by the EU/EC, but must follow relevant UN rules. It is as the Italian speaker said to the chair, “with your consent, I will pass the floor to Mr.X”. So the title of the presentation is ***“Institutional Ambiguities and Political Realities in the EU-UN relationship”*** and I will first address the institutional ambiguities by giving you a little overview of the different legal statuses that the EC/EU can/could/does have in the UN system. Then I will discuss the political realities by giving an overview of what is the actual situation presently of the EC/EU in the UN system, which status has been achieved in certain situations, and where no status has been achieved at all. Then, we will very briefly touch upon the consequences of the Treaty on the EU Constitution, if the British referendum goes well, of course.

Our possible positions in the UN: first of all, there is of course membership, where you have full rights and obligations, but that is only possible if the founding treaty of the UN or any of its specialized agencies so allows. That is obviously not the case, as most of you will know. Article 4 of the Charter says that the UN is only open to “other peace-loving states”, apart from the original founders, which have a place in Art. 3, and it is very difficult to amend that provision, because art. 107 of the Charter makes that close to impossible. You need two thirds of the members in the General Assembly, unanimity of the Security Council... this is indeed the general problem of amendments of the Charter. In special organisations and agencies under the UN it is not much different. Those constitutions are generally not open to non-states, to international organisations, and amendments are only possible with very large qualified majorities to change the constitution. With those handicaps, when is it likely that the founding treaty of a UN organisation might be adapted? Our experience is, it happens if the communities’ union’s competence in the field covered by that organisation, has become so glaringly obvious that the partners in the organisation can no longer possibly deny it. Before that moment, they will seek every possible way of denying it.

Full participation is another status that you might reach, it is a somewhat informal status which implies that you can be present at all meetings, formal and informal, and you can make interventions, including the right to make proposals, but you don’t have a right to vote. And it is usually possible in the meetings in which you have this right of full participation, to change procedural rules with fairly simple majorities. A third possibility, is to have (enhanced) observer status. The precise content of that regime varies according to the body in which you find yourself. The presence may be limited to formal meetings, or include presence in

informal meetings sometimes, formal interventions are usually only possible at the end of all the interventions of the parties or official participants, so that your interventions carry less political weight. Moreover, normally you may not propose amendments during the debate, although in some cases there are exceptions to that, and, obviously, you have no right to vote. In some cases the community union doesn't achieve any distinct status in international organisations of the UN system, and then there is the general obligation of loyalty which exists both under the EC and under the EU Treaty, which should stimulate member states to act broadly in the interest of the community and of the EU. The EU presidency may represent all the member states in the common forum and security policy matters, with specifically agreed statements on behalf of the EU as for instance was the case of the Italian chair in the 6<sup>th</sup> committee. The provisional conclusion of that is that the procedural hurdles for full membership are quite high. The chances to get the full participant or observer status are better, and the concrete outcome depends on the goodwill of the others represented in the relevant bodies. In practice, the status may cover the whole range of nuances between full participant and mere observer. And if there is no distinct status, member states and the presidency should take care to maintain at least some coherence.

There are obviously certain ambiguities in our relationship to the UN, also due to our own imperfect constituent instruments at the moment. Ambassador Van Meeuwen referred to art. 19 of the EU Treaty, which concerns the coordination of the position in all international organisations, and in particular the coordination and information on the part of the members of the Security Council. And there is this often overlooked small art. 302 of the EC Treaty, which says that the Commission will maintain 'all proper and appropriate relationships with the UN Secretariat', which provides a very flimsy base on which to undertake anything vis-à-vis the UN. Obviously at present, this has been the approach of the Commission so far, the idea is to get membership for the EC wherever that is possible. And that may become very useful later on when we get to the constitutional stage, where the EU and the EC will be integrated. We have been successful in obtaining membership in the FAO in 1991, often that is accompanied –because it is rare to have an absolute parallelism between the area covered by the organisation and the competences exclusively held by the Community, the result of which is a mixed accession, a mixed agreement with that organisation, and mixed representation- by elaborate declarations of competence (i.e. is it a member state or the community that speaks on a certain issue and that votes on specific issues?). Yet, I won't go into the details of that. We have become a member of the WTO, we are even an original member, but that was a rather specific situation, and the WTO is not an official member of the UN system. So far, the Community has been unsuccessful and is still discussing very intensely the EU/EC accession to organisations as the International Maritime Organisation, and the ICAO, where it is clear that after certain judgements of our Court of Justice the competences of the Community (esp. in civil aviation) have been growing. There's also the oddity of our relationship with the IMF, where monetary policy actually has exclusive competence, but where it is still not possible to realize that in a specific position in the IMF. However, the ECB has an observer status. Full participation has been achieved in a number of big conferences under UN auspices, such as the Commission on sustainable Development, and world conferences like the Monterrey conference, and the World Conference on the Information Society. It has been impossible so far, because of political obstacles, to achieve a sort of special upgraded observer status in the UNHCR Executive Board, whilst the EC is nevertheless one of the biggest donors of that refugee organisation. As far as the observer status is concerned, we are observers in the UN General Assembly, since 1974, and in ECOSOC since 1981, and also in several specialist agencies like the World Bank and the IAEA. On a practical level, my colleagues have already pointed out there are desk-to-desk exchanges, there is a financial and administrative framework agreement, concluded between

the UN and the Community, that covers all the financial transactions between the organisations, esp. when the UN (agencies) are using EC budgetary money for certain operations and projects in the development area. And the volume and the subjects of the common EU statements in the UN and in other specialized agencies is continually on the rise. It is also very gratifying to see that sometimes these interactions become very close, like in the unfortunately failed attempt to have Cyprus enter as one island in the community, recently, which was preceded by very intensive discussions both on the island and later in Switzerland. One of the interesting features of those discussions was that there was constant interaction between Commission and Council officials and UN officials and that there is one example of two Commission officials being seconded to the UN team for a brief period, so that the team would have sufficient expertise on community law in order to judge immediately whether certain proposals made by the two parties would be in conformity with both what the UN wanted to do politically, and with the *Acquis communautaire*. These are very encouraging aspects of cooperation.

As far as the future is concerned, if the EU Constitution comes about, we will have one legal personality, and I think that the approach to this should then be that the community simply advises the UN that the EU will inherit its various statuses in the UN bodies. I think that, as is in conformity with the Council's reaction to the Commission's communication on the UN, it would lead -fairly shortly after the entry into force of the new constitution- to an initiative on the part of the EU to ask for an upgrading of the status inherited of the EC. That way it can be in better conformity with the actual contribution and the actual possibilities of the new EU to act within the UN framework.

To come back to my anecdote in the beginning, if that comes about, it will be possible for the legal advisor not to enter the debate any longer as a disguised Italian, but to sit there behind the EU name plate and to give his opinion on the responsibility of international organisations straight under that flag.

Thank you