

The Hiil Law of the Future Series

The Hague Institute for the Internationalisation of Law (Hiil) seeks to identify current and future legal problems that result from internationalisation seen from the perspective of national legal orders and to generate practical solutions for them. It actively steers research which addresses these problems; identifies high level scholars capable of developing innovative ideas and solutions; and fosters a continuous process of connecting legal, social and behavioural sciences with practice. To that end Hiil invests in strategic research and in ongoing, multi- and interdisciplinary dialogue.

One activity initiated to achieve this aim is the Hiil Law of the Future series. These annual conferences constitute a bridge between practice – where problems may be identified – and academia – where solutions may be found. They explore how law is changing or needs to change, under the pressure of globalisation and internationalisation, and how the roles of actors and stakeholders will or must change as a consequence. Each meeting seeks to chart the law of the future, defining the law in the light of an ongoing process of change, identifying the problems that the national legal system faces now, or may expect to face, and finding solutions.

The conference series is top-level and international. Its scope is defined by the problems addressed and is not restricted by academic discipline. All the disciplines necessary to shed light on the complex issues explored are incorporated. The Law of the Future series is not simply a forum for debate, but seeks to find practical and innovative answers to the complex problems the national legal system is facing today and in the future...



HAGUE INSTITUTE FOR THE INTERNATIONALISATION OF LAW



Law of the Future 2008

Hiil – National law in a global society

Conference location:

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Law of the Future 2008

Hiil – National law in a global society

HAGUE INSTITUTE FOR THE INTERNATIONALISATION OF LAW

23 & 24 OCTOBER,
PEACE PALACE, THE HAGUE

The Changing Role of Highest Courts
in an Internationalising World

Announcing the second conference in the annual HiIL Law of the Future series

The Changing Role of Highest Courts in an Internationalising World

On 23 and 24 October, 2008, HiIL will bring together some of the world's most pre-eminent scholars and judges to exchange views on how the internationalisation of law is affecting the work of highest courts at the national level.

The 2008 HiIL Law of the Future Conference will be opened by the Dutch Minister of Justice, H.E. Dr. Ernst Hirsch-Ballin and the President of the Dutch 'Hoge Raad', Justice Willibrord Davids. Following this plenary session, the conference will branch out into three parallel workshops that will explore the notion of legal unity and coherence, the notion of legitimacy and separation of powers, and the nature of the judicial dialogue.

Over the past 18 months, HiIL has canvassed its global network of academics and practitioners in order to bring into focus the most practically urgent, conceptually challenging and normatively contested issues pertaining to the position of national highest courts in an internationalising environment. Following two colloquia organised by HiIL, the three central themes set out above have emerged as particularly salient vis-à-vis the overarching theme of highest courts in an internationalising world. On the basis of this brief, a team of young researchers was charged with drafting a concept paper outlining the central lines of debate with regard to the present themes. The final concept paper can be found at our Law of the Future conference web site <http://www.lawofthefuture.org>.

Having thus ensured that the conference programme meets the highest standards of quality, HiIL confidently expects that the momentum of this project will carry through and culminate in exciting and innovative insights into the role of highest courts in an internationalising world. Moreover, HiIL will allocate research funds on the topic of Highest Courts in the coming months.

The immediate objective of this conference is to encourage and facilitate a multi-disciplinary approach to the issue of judicial internationalisation. A key focus in this process is the opportunity offered for cross-fertilisation between practice and scholarship. We thus invite both scholars and practitioners from various countries and disciplines to contribute to this conference in order to arrive at insights and solutions that are of use to both practice and academia. HiIL also hopes to contribute, by means of this conference, to building a more coherent international research agenda around the questions raised by highest courts that function in an internationalising environment.

Information on the registration procedure and the conference fee, as well as the most recent substantive information, can be found at our conference web site
<http://www.lawofthefuture.org>.

Alternatively, you can direct your inquiries to highestcourts@hiil.org.

Programme Thursday 23 October

Morning

- Opening Plenary Session
- Parallel Workshops
- Lunch

Afternoon

- Workshops continue

Evening

- Dinner

Programme Friday 24 October

Morning

- Parallel Workshops
- Lunch

Afternoon

- Closing Plenary Session:
 - Presentation of reports by workshop chairs
- Final Panel

OPENING PLENARY SESSION

Introduction by **Sam Muller**
Director of the Hague Institute for the Internationalisation of Law

Keynote Address by **Willibrord Davids**
President of the 'Hoge Raad' of The Netherlands

Keynote Address by **Ernst Hirsch-Ballin**
Minister of Justice of The Netherlands

FINAL PANEL

The final panel will bring together the various themes of the three workshops in light of the experience of several prominent highest court judges. The discussion will address the following core question: *What has been the role of national judiciaries, in particular highest courts, in the process of the internationalisation of law and the increasing interconnectedness between national legal systems as well as between the national and international legal spheres?*

Chair – **Sam Muller**
Director of the Hague Institute for the Internationalisation of Law

Confirmed panelists:

- **Geert Corstens**
Member of the 'Hoge Raad' of The Netherlands
- **Bruno Cotte**
Member of the International Criminal Court
- **Michael Kirby**
Member of the High Court of Australia
- **Albie Sachs**
Member of the Constitutional Court of South Africa

WORKSHOP 1

What is the role of highest courts in maintaining legal unity in the internationalising world of today?

This workshop will address the meaning and significance of legal unity as it pertains to highest national courts in the current internationalised setting.

Chair – **John Bell**
Professor of Law, Pembroke College, Cambridge

Confirmed speakers:

- **Lord Bingham**, *Senior Law Lord, United Kingdom*
- **Patrick Glenn**, *Professor of Law, McGill University*
- **Jeremy Waldron**, *Professor of Law, New York University Law School*
- **Michel Bastarache**, *Counsel, Heenan Blaikie LLP, former Judge of the Supreme Court of Canada*

WORKSHOP 2

Is the separation of powers an adequate basis for judicial legitimacy in an internationalised environment?

The changing role of highest national courts will be placed in the context of the new challenges that have resulted as a consequence of the changing global environment. Specifically, emphasis will be placed on the various normative categories of domestic politics, such as constitutionality, judicial legitimacy and separation of powers, with a view to relating these concepts to the aforementioned internationalised environment. The central objective will be to consider the implications of these issues for the day-to-day functioning of highest courts and our understanding of their normative position within the contemporary world.

Chair – **Olivier Dutheliet de Lamothe**
Member of the Constitutional Council of France

Confirmed speakers:

- **Eyal Benvenisti**, *Professor of Human Rights, Tel Aviv University*
- **Mitchel Lasser**, *Professor of Law, Cornell Law School*
- **Otto Pfersmann**, *Professor of Law, University of Paris*
- **Mark Tushnet**, *Professor of Law, Harvard Law School*

WORKSHOP 3

What institutional practices are currently in place to allow national courts to operate across borders and what is the likely course of development these practices will follow?

This workshop will address the 'how' question. Courts all over the world are talking and listening to one another. The extent to which this occurs varies widely. This judicial dialogue will be examined from both an internal and external view. Emphasis will be placed on the empirical facets of judicial internationalisation, i.e. what is happening and what could possibly happen in the years to come? Explicit normative concerns with these developments will be addressed in workshop 2.

Chair – **Robert Post**
Professor of Law, Yale Law School

Confirmed speakers:

- **Andrea Lollini**, *Professor of Law, University of Bologna*
- **Maureen Harding Clark**, *Member of the High Court of Ireland*
- **Guy Canivet**, *Member of the Constitutional Council of France*
- **Benjamin Odoki**, *Chief Justice Supreme Court of Uganda*
- **Ajit Prakash Shah**, *Chief Justice of the Delhi High Court, India*