



W G HART LEGAL WORKSHOP 2008
Tuesday 24 June to Thursday 26 June 2008

THEORY AND PRACTICE OF HARMONISATION

Academic Director:

Professor Mads Andenas, University of Oslo and University of Leicester

Plenary speakers and chairs will include:

Professor Guido Alpa, University of Rome *La Sapienza*

Professor Mads Andenas, University of Oslo and University of Leicester

Dr Camilla Andersen, University of Leicester

Professor Jan Dalhuisen, King's College, University of London

Dr Marius Emberland, University of Oslo

Dr Duncan Fairgrieve, Sciences-Po, Paris

Professor Andreas Føllesdal, University of Oslo

Baron Walter Van Gerven, Professor, University of Leuven, former Advocate General, Court of Justice to the European Communities

Dr Marit Heidemann, University of Westminster

The Rt Hon Sir Francis Jacobs, Professor, King's College, University of London, former Advocate General, Court of Justice to the European Communities

Professor Kare Lilleholt, University of Oslo

Professor Hans Micklitz, European University Institute, Florence

Professor Norbert Reich, Professor Emeritus of Law and Senior Fellow at the Centre for European Legal Policy (ZERP), Bremen University

Professor Geoffrey Samuel, University of Kent

The Rt Hon Lord Slynn of Hadley, Lord of Appeal and former Judge and Advocate General, Court of Justice to the European Communities

Call for Papers

Harmonisation is an important feature of the modern legal system. Harmonisation of the laws of the Member States is a core instrument of the European Union. Many international treaty obligations entail duties to adopt conform legislation and ensure its conform application. International and regional human rights treaties provide important examples of this. There is a considerable scholarly literature on different harmonisation issues, but not bringing together the outcome of this scholarship in a comparative analysis or in developing more general theory on the harmonisation process or different aspects of it. There is a need for bringing together scholars of a range of legal, social science and humanities disciplines, including from within the law, general legal theory or jurisprudence, constitutional law, comparative law, international law, human rights law and EU law, and the different national and international legal areas most affected by harmonisation. Contributions are made in integration studies, international relations, European studies, and political theory.

Moving freely over the boundaries that divide the law, and the fragmented scholarly disciplines, may combine perspectives in interdisciplinary and multidisciplinary scholarship. In this way may one provide models for, and improve, the understanding of the harmonisation process.

The form of the harmonising instrument offer much variety and innovation. International treaties and conventions do not follow universal models. In the EU, there is an important difference between directives and regulations, but also the regulation, which has direct effect without any legislative transposition, often requires different implementation measures to have its effect in national law. Some main types of directives are minimum standards directives, maximum standard directives, framework directives, and directives in the process of open method of coordination. The relationship to

the fundamental freedoms in the EC Treaty is another issue. For international treaties and conventions, there is the relationship to customary international law and other treaties and conventions.

The role of international financial institutions, such as the World Bank and the IMF, in legal harmonisation across a wide field, is controversial and requires further analysis to be fully understood. Harmonisation, aid and development bring up many related issues.

Informal harmonisation processes, outside the intergovernmental fora, are of increasing importance. The role of model codes, principles and other outcomes of such processes is another field of study. Their interaction with the intergovernmental organs, and their reception in contract practice or directly by national legislators or courts merits further attention. *Principles, Definitions and Model Rules of European Private Law. Draft Common Frame of Reference (DCFR). Interim Outline Edition.* (2008), the research carried out by the Study Group on a European Civil Code (the von Bar Group) and the Research Group on EC Private Law (Acquis Group) and other academic and scholarly projects and their relationship with more formal EU procedures, see for instance the European Commission's 2003 *Action Plan on a More Coherent European Contract Law* merits study.

Transposition in national law takes different form in national legislation, and the procedures vary as well. Harmonisation has affected the form of national legislation, and the sources of law in the national legal system. Court practice in the application of harmonised law follows yet other principles and patterns. The response in case law to the new sources of law that can assist in promoting uniformity, or in some field, the ways in which the lack of such sources are compensated for, is of particular interest. The use of judgments from other international or national jurisdictions is one current issue. Informal networks of judges cooperate across jurisdictional boundaries in the application of international instruments, assisting one another in finding sources and practical solutions to the uniformity problems.

Amendment and monitoring of the transposition and subsequent practice under national law is another area where there in some areas are highly developed regimes, and in others practically nothing following the adoption of a convention. There are models involving an independent international monitoring body, or more judicialised institutions, or combinations of supranational monitoring and court institutions. Novel forms of institutionalised peer review have developed over the last couple of decades.

Enforcement and sanctioning provide other challenges, closely related to monitoring and amendment.

The experiences with harmonised regimes provide an extensive material which is well suited for research. In the EU, there is an emerging scholarship comparing the transposition of directives in different national laws. This provides a basis for the Review of the Consumer Acquis, which is another of the harmonisation projects of the European Commission, currently limited to eight directives, including the Consumer Sales Directive and the Unfair Terms Directive, leaving aside other directives in the consumer field such as the Consumer Credit Directive, the Unfair Commercial Practices Directive and the Product Liability Directive. Maximum harmonisation and the use of mandatory rules in the directives may have had a profound effect on the private of the Member States, which if it has had such an effect, remains underexplored.

The international conventions in the long established tradition for harmonisation of commercial law provides another field of emerging scholarship, see for instance, the United Nations Convention on Contracts for the International Sale of Goods, 1980), the UNCITRAL Model Law on International Commercial Arbitration 1985, UNIDROIT's Principles of International Commercial Contracts, the EBRD's Secured Transactions Project, and the ICC's Uniform Customs and Practice for Documentary Credits.

In comparative law there is a current discourse about legal transplants. There is also a challenge to the idea of convergence between national legal systems and traditions. One issue here is to link the theoretical models that have emerged here with the scholarship on harmonisation in different fields.

This year's W G Hart Workshop will address these issues and others related to the theory and practice of harmonisation.

**We call for papers to be submitted with title and abstract by 15th April 2008. Papers can be suggested under the headings which follow or others. Those wishing to organise a specific seminar of a group of papers on a theme should also make contact by 15th April 2008 with the academic organiser:
Email: mads.andenas@sas.ac.uk, *with a copy to:* belinda.crothers@sas.ac.uk**

Suggested Topics cover general approaches to the theory and practice of harmonisation and studies of fields of law where harmonisation problems are particularly pressing, for instance:

- Harmonisation and the autonomy of national constitutions and legal systems
- The role of comparative law scholarship and method and harmonisation
- The experience with the internal market and the EU legislative process, national transposition, reception and application in national courts
- European contract law and the Common Frame of Reference and methods and procedures for harmonisation
- European tort law and the experience with the Product Liability Directive
- The reception of harmonised law in international conventions in national legislation
- Sources of law in times of harmonisation
- How successfully are legal systems converging as a consequence of harmonisation
- Harmonisation, legal assistance and development
- The impact of the WTO on legal and institutional harmonisation
- European and international human rights law obligations and national implementation
- International commercial law and national legal systems
- International financial law and national legal systems

If you are simply interested in attending the Workshop, please register your interest with:

*Belinda Crothers,
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Email: Belinda.Crothers@sas.ac.uk.*

Workshop Website: www.sas.ac.uk/events/view/4180

INSTITUTE OF ADVANCED LEGAL STUDIES

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Theory and Practice of Harmonisation

Website:

Please add me to the mailing list to receive further information about the 2008 W G Hart Legal Workshop on “Theory and Practice of Harmonisation”

Name and Title (Professor/Dr/Mr/Mrs/Ms/Miss)
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University/Organisation:.....
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ADDRESS (for correspondence between now and 26 June):
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Tel: Fax:

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Please complete and return this form to:

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