



International Judicial Conference

May 21-23, 2014 Malta

17th Annual International Judicial Conference

Malta
May 21-23, 2014

Sponsored by The Furth Family Foundation
Co-sponsored by
The University of Michigan Law School
International Foundation for Electoral Systems

Wednesday, May 21

Participants arrive at conference hotel

- 10:00 - **Conference Registration**
18:30 Grand Hotel Excelsior
Great Siege Road
Floriana, FRN1810
Malta
- 14:30 - **Session One Panel Meeting**
15:00 See Conference Reception Desk
- 15:00 - **Session Two Panel Meeting**
15:30 See Conference Reception Desk
- 15:30 - **Session Three Panel Meeting**
16:00 See Conference Reception Desk
- 16:00 - **Session Four Panel Meeting**
16:30 See Conference Reception Desk
- 18:15- **Media Conference**
18:45 Grand Hotel Excelsior
- 19:00 **Welcoming Reception**
Pool Deck
Grand Hotel Excelsior

Thursday, May 22

- 9:00 **Opening Remarks**
- His Honor Silvio Camilleri, Chief Justice of Malta
 - Frederick P. Furth, Esq., Founding Partner, The Furth Firm LLP, Conference Chairman, IFES Board of Directors
 - Timothy Dickinson, Professor, University of Michigan Law School



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Session One – The Rule of Law in Diverse Cultures

Moderator: Galo Pico Mantilla

Commentator: Professor Timothy Dickinson

- Chief Justice Dr.sc. Fejzullah Hasani, Supreme Court of Kosovo
- District Judge Krishna P. Subedi, Judicial Council of Nepal
- Judge Dr Mario Jelušić and Judge Dr Duška Šarin, of the Constitutional Court, Republic of Croatia

The *Rule of Law* is a central pillar of democratic states, and is said to underpin a fair and prosperous society, but it finds expression in different ways in different countries. It is said to be based on four core principles:

- The government and its officials and agents, as well as private persons and entities, are accountable under the law.
- The laws are clear, public and just; protect fundamental rights, including the security of persons and property; and are applied equally to all.
- The processes of enactment, administration and enforcement are accessible, equitable and efficient.
- Justice is delivered in a timely manner by competent, ethical, and independent officials who are sufficient in number, have adequate resources, and reflect the makeup of the communities

The *World Justice Project* has indicated that societies that apply the rule of law are characterized by:

- order, security and the protection of fundamental rights,
- maintained by open governments with limited powers,
- which are not corrupt or predatory on their societies, and enable citizen engagement and participation, and
- maintain effective and equitable systems of civil and criminal justice, and regulatory enforcement.

Where traditional, religious or community systems supplement formal systems, they are effective and protect fundamental rights; and display the same standards of fairness in resolving disputes as formal systems.

The United Nations sees the rule of law at the national level as a framework that includes a Constitution or similar legal foundation as the highest law of the land; a clear, consistently implemented legal framework; strong institutions of justice, governance, security and human rights that are well structured, financed, trained and equipped; transitional justice processes and mechanisms; and a public and civil society that contributes to strengthening the rule of law and holding public officials and institutions accountable.



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The purpose of this session is to discuss the meaning of the Rule of Law and to explore its application in countries around the world.

- 10:15 Coffee Break
- 10:45 Comments
- 10:55 General Discussion
- 12:00 Lunch
- 13:30 **Session Two – First Principles: Constitutions, Legal Systems and the Judiciary**

Moderator: Frederick P. Furth

Commentator: Daniel Crane, Associate Dean and Frederick Paul Furth Sr.
Professor of Law, University of Michigan Law School

- Mr Nicolae Esanu, Member of the Venice Commission for Moldova
- President Gintaras Kryževičius, Supreme Court of Lithuania
- Judge Fritz Brand, Supreme Court of Appeal, Republic of South Africa

First principles of law derive from natural law, comprising universal, binding rules of moral behavior based on human nature. Many Constitutions assert such principles in their preambles and charters of fundamental rights. Positive law is human-made, contextual and subject to change. Justices from different legal traditions apply varied approaches in their courts in relating constitutional provisions, statutes, and judicial precedent, in administering the law and securing justice.

One important distinction can be made between states in which the Constitution is the supreme law of the land, and where no statute contrary to the provisions of the Constitution may be passed, or if passed, can be set aside as unconstitutional; and states where Parliament, or another superior legislative body is sovereign, and can make, or set aside, laws as it sees fit. Parliamentary sovereignty is a principle of the constitution of Great Britain in which Parliament is the supreme legal authority, which can create or end any law. Generally, the courts cannot overrule laws that Parliament has passed, and no Parliament can enact a law that future Parliaments cannot change.

In re Secession of Quebec, 1998 CanLII 793 (SCC), [1998] 2 SCR 217, the Supreme Court of Canada noted the distinction between the two systems: "This Court has noted on several occasions that with the adoption of the Charter (of Rights and Freedoms), the Canadian system of government was transformed to a significant extent from a system of Parliamentary supremacy to one of



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constitutional supremacy. The Constitution binds all governments, both federal and provincial, including the executive branch. They may not transgress its provisions: indeed, their sole claim to exercise lawful authority rests in the powers allocated to them under the Constitution, and can come from no other source."

The purpose of this session is to discuss the implications of these two systems, and the different approaches of the courts in each.

- 14:45 Comments
- 14:55 Coffee Break
- 15:25 General Discussion
- 17:00 End of Session
- 19:00 -
21:00 Dinner hosted by His Honour Silvio Camilleri, Chief Justice of Malta
Marina Triangle/Bastion Terrace
Grand Excelsior Hotel

Friday, May 23

9:00 Session Three – The Role of the Judiciary in Electoral Settings

Moderator: Paul A. Magnuson, Judge, U.S. District Court for the District of Minnesota

Commentator: Julian Davis Mortinson, Professor, University of Michigan Law School

- J. Clifford Wallace, Senior Judge, Chief Judge Emeritus, U.S. Ninth Circuit Court of Appeals
- President Teresa Flemming Kulesza, Supreme Court of Poland
- Justice Dr. Johannes Schnizer, Constitutional Court of Austria

While Courts have long been responsible for adjudication of electoral disputes, in recent years, Justices and other judges have been called on to provide guidance in drafting constitutions and electoral laws, and in some cases, even to act as electoral officers.

The purpose of this session is to explore the circumstances giving rise to these new roles for judicial officers and the potential conflicts of interest that may arise as a result; and to allow an opportunity to share perspectives and insights that may assist judges called on to perform these roles, to mitigate the potential for such conflicts.

- 9:45 Comments
- 9:55 General Discussion
- 10:30 Coffee Break



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- 11:00 General Discussion Continues
- 12:00 Lunch
- 13:30 **Session Four – Shari’a in a Civil Setting and the Rule of Law**

Moderator: Representative of the Judiciary of Malta

Commentator: Sean Cleary

- Adel Omar Sherif, Deputy Chief Justice, Supreme Constitutional Court of Egypt
- Dr. Issam M. Saliba, Senior Foreign Law Specialist, Library of Congress

There are about 1.8 billion Muslims around the world (about 26 per cent of the global population), and 57 states in the Organization of Islamic Cooperation (OIC). Many of these states base their legal systems on the *sharia*, but the principles of Islamic jurisprudence, derived from the *Quran*, *sunna* and *hadith*, find expression in many different ways.

A recent study by a working group of scholars reflective of the spectrum of Islamic legal and political thought, both Sunni and Shi’a, is in publication by Palgrave Macmillan. It advances the thesis that the defining characteristic of the Muslim state is neither the application of *hudud* punishments, nor membership of the OIC, but just governance in order to advance the *maqasid al sharia* – the “core objectives of Islamic Law”. These core objectives are the protection of *life, mind, religion, family, property* and *honor or dignity*.

The purpose of this session is to discuss the approaches of different OIC countries in applying sharia principles in their legal systems, both civil and criminal, and the relationship of these systems to the principles of the rule of law. We shall also discuss the growing importance of Islamic finance: Almost \$1500 billion are managed today under *sharia*-compliant instruments in some 70 countries. Dubai and Kuala Lumpur are *sukuk* hubs and there are experts on Islamic banking and finance, and large volumes of transactions in London and Frankfurt, as well as Bahrain.

- 14:15 Comments
- 14:25 Coffee Break
- 15:00 General Discussion
- 16:30 Concluding Remarks
- Peter G. Kelly, Esq., IFES
 - Daniel Crane
 - Frederick P. Furth
- 17:00 End of Session



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19:00 - Dinner hosted by the Furth Family Foundation
21:00 Bacchus Restaurant
1, Inganuez Alley
Mdina, Malta

Saturday, May 24

10:00 **Tour of Malta Sponsored by the Furth Family Foundation**