FOREWORD

If – as I am – you are of the belief that it is the duty of a judge to be attuned to the cultural, social and political realities of his jurisdiction, then I believe the contributions in this volume will further compel you to accept that these same realities are strongly conditioned by forces of globalisation. The law and the courts which apply it are not institutions distinct from society; they are part of it. And – like it or not – our societies have been internationalising at a steady pace.

Being a judge on a highest national court no longer implies confining one's perspective exclusively to the world within one's own borders – if indeed it ever did. This much is clear: those public officials who concern themselves with national affairs will invariably be confronted with the fact that those affairs will have an international dimension.

I should however caution against overstating this point. For good reasons, the law follows society at a certain distance. Internationalisation is not a passport to limitless border crossing. Democracy and the rule of law remain our core guiding values. And courts have a specific role to play in respect of these values. They are there to uphold the law when, in specific cases, it is called into question. And they are there to shape and maintain the rule of law in a democratic system by how they act. In some cases, those values will demand that courts do apply legal standards which originate from outside the national system. And that is perhaps in essence what this book is about. Highest national courts, once solely dedicated to a fairly autonomous national legal system are now themselves part of an internationalising society and need to find ways to deal with this changed reality.

The present book exemplifies one of the undeniable virtues of globalisation, namely its power to bring people together from across borders and cultures to exchange valuable knowledge and experiences. In this sense the present work is not merely a study of globalisation and law, but is itself an instance of globalisation changing the way that lawyers (and in this case particularly judges) exercise their profession. 'Judicial internationalisation', as the editors have called it in their introduction to this book, is one of the great benefits of living in a globalised world. Although there is an undeniable trend to emphasize the potential for injustice inherent in globalisation as a catalyst for fragmentation and conflict, we should not be blinded to its potential for cooperation and mutual understanding. Over the course of the many years in which I have been a judge I have on a great many occasions been privileged enough to learn from and exchange views with my foreign colleagues. I believe I am a better judge because of it.

Perhaps one of the most important lessons to learn for today's highest courts is that they are not isolated, that their problems are unlikely to be peculiar to their own jurisdictions and that the advance of modern information technology is becoming ever more effective in breaking down the practical obstacles to more comprehensive forms of cooperation and communication. More often than we probably realise, we *could* work together and quite frequently it would be very *unwise not to* work together, particularly when problems are border transcending. But in what sense can it be said that we *must* work together?

As those judges writing in this volume have pointed out, the first and foremost concern of any national judge is with the needs and concerns of his own jurisdiction. In my view, allowing the experience of other jurisdictions to bear upon one's own decision making does not violate a domestic judge's responsibilities to his constituency. On the contrary, any possible avenue which may shed more light on a complicated problem should not be left unexplored. A judge who is willing to learn from his peers – domestic or foreign – is simply a judge who recognises a duty to subject his deliberations to the strongest form of scrutiny possible. Transnational communication between courts is just one of many instruments of which today's judges today can avail themselves.

This is not to say that legitimacy concerns are not tangible. Such concerns should never be taken lightly, and if transnational judicial cooperation is indeed a useful tool, the authors in this volume shed much light on how to use it judiciously. Indeed, legitimacy ought to be a central concern in every decision a court takes. But this is true for all aspects of judicial decision making, not merely when it involves the consultation of foreign decisions or foreign colleagues. Disputes about the requirements of judicial legitimacy and propriety are essentially and unavoidably contested. Despite this constant feature in the practice of law and politics, it is my firm belief that any judge acting in good faith has much to gain the possibilities of an expansive, even global judicial community. That such possibilities may be fraught is a reason to exercise caution and to endeavour to elucidate the dynamics of judicial internationalisation. In this spirit, the present volume has much to offer to those confronted with globalisation.

Judge Geert Corstens

President of the *Hoge Raad der Nederlanden*
[Dutch Supreme Court in Civil, Criminal and Fiscal disputes]