Accountability and the Rule of Law at International Level

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1. Introduction

On 25 January 2008, the Amsterdam Centre for International Law (University of Amsterdam) and the Leuven Centre for Global Governance Studies (University of Leuven) organized a workshop in Amsterdam on the theme "Accountability and the Rule of Law at International Level". This workshop was organized as part of the Network of Excellence CONNEX ("Connecting Excellence on European Governance") and the Research School *Ius Commune*. The workshop was co-chaired by Professor André Nollkaemper (Amsterdam) and by Professor Jan Wouters (Leuven). The aim of the workshop was to take stock of and to stimulate academic research on the theme of accountability processes in the international legal order. In particular, the presentations and discussions aimed to inquire how the international rule of law may be advanced and supported by the rapidly increasing number of international mechanisms that seek to hold states and international organizations accountable for their conduct. The programme of the workshop and the list of participants are included in annexes 1 and 2 of this brief.

The purpose of this policy brief is to give a general overview of outstanding issues with regard to accountability and the international rule of law. In general Leuven Centre for Global Governance Studies policy briefs aim to stimulate further discussion and research on relevant topics.

2. The Problem

In the last five or ten years, the concept of "rule of law" has become something of a buzzword in the international legal scholarship and practice. The concept became a prism through which many more general issues are looked at. The promotion of the rule of law notably features high on the UN Agenda. The 2005 World Summit Outcome Document identifies "Human rights and the rule of law" as one of the five issues which deserve closer attention in the UN ambit. Since 2004, the Secretary-General has issued several keynote reports on the subject, and the General Assembly has devoted several debates to this topic.

Despite this intense activity, the concept of rule of law applied to the international realm still lacks authoritative conceptualization, notably in its relation to the rule of law in domestic societies. Another question relates to the role of accountability – another much discussed term – in the achievement of the rule of law at the international level. More precisely, the role of courts in the maintenance of the rule of law is addressed, and, therefore, the possibility of an international rule of law in the absence of general compulsory jurisdictions in international law. This further poses the question of the role of the para-legal global regulatory bodies and accountability mechanisms in the development of an international society governed according to the rule of law.
3. Issues discussed

3.1. International rule of law as a concept

3.1.1. A concept still unclear: various definitions of the rule of law

The most commonly quoted definition of the rule of law is that proposed by British scholar Albert Venn Dicey at the end of the nineteenth century, according to which the rule of law articulates around three fundamental principles:

- "the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power";
- "equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts";
- "the law of the constitution is a consequence of the rights of individuals as defined and enforced by the courts".

Dicey’s conception of the rule of law is essentially formal, and may be characterized as "thin". A more recent line of scholarship has advocated for "thicker" conceptions of the rule of law, arguing that it could not be disconnected from certain substantial elements, such as a core of fundamental rights, or a democratic environment. In the face of this inflation, certain authors have warned of the dangers of turning the concept of rule of law into a full-fledged social philosophy, thereby diluting the heuristic value of the concept.

As an example of a thicker articulation of the rule of law, one can usefully quote the definition given by the UN Secretary-General in his 2004 report entitled The rule of law and transitional justice in conflict and post-conflict societies:

"[The rule of law] refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency."

3.1.2. How to conceive of an international rule of law?

The concept of rule of law has mostly been studied in reference to domestic constitutional orders. When it comes to "externalize" it in the international dimension, one must note, as does Judge Rosalyn Higgins, that "it is clear that the

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3 Concerning Dicey's articulation of the rule of law, see S. BEAULAC, "An Inquiry into the International Rule of Law", EUI Working Papers, MWP No. 2007/14, p. 4.
4 Id., p. 8
domestic rule of law model does not easily transpose to international relations in the world we live in. That seems to be an unavoidable reality.”

In this context of great uncertainty, two main approaches can be identified in the conceptualization of the international rule of law:

- **the rule of law internationalized**, meaning the application of the principles of the rule of law, starting with those identified by Dicey (cfr supra), to the international legal order;
- **the internationalization of the rule of law**, which acknowledges the fact that the rule of law in domestic societies has become an issue in international relations and which promotes the use of international instruments for achieving rule of law values domestically.

Both conceptions are to some extent present on the UN agenda, as paragraph 134 of the World Summit Outcome Document shows. Also, the Secretary-General, in his 2006 report entitled *Uniting our strengths: Enhancing United Nations support for the rule of law*, classifies the rule of law-related activities of the UN into three main "baskets":

- first basket: "rule of law at the international level";
- second basket: "rule of law in the context of conflict and post-conflict situations";
- third basket: "rule of law in the context of long-term development".

The first basket corresponds to the rule of law internationalized, while the second and the third basket match with the internationalization of the rule of law. As far as the first basket is concerned, the UN action does not seem to have gone much further than repeating evidences, such as the need to develop and respect international law (UN Charter, treaties, etc.) and to resort to international dispute resolution mechanisms, and to the International Court of Justice in particular.

On the contrary, the second and third baskets seem to receive more concrete attention at the UN, as the Secretariat is engaged in a thorough reflection on the various ways to coordinate UN actions on the field so as to promote the rule of law domestically (with a special focus on war-torn or transitional regimes) through, for example, peacekeeping and peacebuilding activities and programs, reconciliation processes, the design of viable and effective judicial systems, etc.

Certain authors have seriously challenged the possibility that an international rule of law (in the first conception above) might ever emerge in the current state of international relations, some of them even speaking of a "myth of the international

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6 Resolution of the UN General Assembly of 24 October 2005, UN Doc. A/res/60/1.
8 See UN Secretary-General, *Uniting our Strengths*, op. cit., par. 41, p. 13; Resolution of the UN General Assembly of 6 December 2007, UN Doc. A/res/62/70.
9 See UN Secretary-General, *The rule of law and transitional justice in conflict and post-conflict societies*, op. cit.
10 See UN Secretary-General, *Uniting our strengths*, op. cit., par. 41-42, p. 13.
rule of law." A strong proponent of such criticism is Martti Koskenniemi, for whom speaking of an international rule of law is an incompetent attempt at ignoring the fundamentally political nature of international relations. According to that view, speaking of an international rule of law properly said is unwelcome and counterproductive, because it negates the particular needs and peculiarities of international relations.

In the same vein, some wonder whether such international rule of law could possibly emerge in a horizontal legal system – like the international legal order –, as it is vowed to become hegemonic and therefore to challenge the primary assumptions of the rule of law: rule by law and not by power and equality before the law. As an incarnation of the power bias in the international legal system, Judge Rosalyn Higgins notes that the Security Council still acts on a "case-by-case basis" to make its decisions, with a right of veto available to some powerful actors only.

Further reflecting on the horizontal character of international law compared to its instituted domestic counterparts, Jacob Katz Cogan notes that

"[t]hough it is said that compliance with international law is high, the international system contains few legislative, judicial, or executive processes analogous to those of States, and, consequently, the system’s ability to self-correct and self-enforce is much more limited, creating gaps between aspiration and authority, procedures and policy." 14

In other words, can the "relative normativity" 15 of international law cope with the ideal of an international rule of law?

Some participants to the workshop have suggested that scholars should adopt an incremental, "modular" approach to the concept of international rule of law, starting with very formal, thin elements of the rule of law, and then start to build thereon and see if more substantive elements can be added to it in order to evolve toward a thicker conception of the international rule of law.

3.1.3. What "international law" should we take into account?

The discussions concerning an international rule of law have mostly focused on international and domestic law *stricto sensu*. However, social regulation increasingly takes other forms, and is increasingly developed by non-state actors, very often on a transnational basis. Can those regulatory instruments participate in the emergence of an international rule of law? How should we then categorize them, notably with regard to the "law" element of the rule of law?

The Foreign Ministers of the G8, in their declaration of 30 May 2007, acknowledge the fact that the promotion of the international rule of law would gain from not

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15 According to a famous phrase coined by Prosper Weil in "Towards relative normativity in international law?", 77 Am. J. Int'l L. 413, 1983.
focusing too much on the international legal system *stricto sensu*, but also from taking into account other non-state regulatory initiatives and actors:

"In order to meet these challenges [i.e. the promotion of the international rule of law], we, the Foreign Ministers of the G8, undertake to promote a more coherent international approach, tying together existing initiatives and supporting the United Nations, regional organisations, states and non-state-actors active in this field. We recognize the importance of encouraging and respecting local ownership and leadership in the efforts towards the promotion of the rule of law. In order to effectively promote the rule of law, all stakeholders, international and national, governmental and non-governmental, have to join efforts."

3.2. The role of accountability in the pursuit of the international rule of law

3.2.1. Accountability as a feature of the rule of law?

The view that the notion of accountability is a definitional part of the broader concept of rule of law is sometimes challenged. However, modern definitions of the rule of law such as that given by the Secretary-General in his 2004 report quoted above, state that the rule of law implies that all persons must be *accountable* to the law, that is, face the social and legal consequences of their violating the law. It indeed seems that for law – and therefore for the rule of law – to have any real social function, the social actors must have the obligation to abide by it and society must be able to hold them into account.

This links to the question of the role of effectiveness in the achievement of the rule of law. Can indeed ineffective laws be said to participate in the development of the rule of law? Is there a rule of law if the law is unable to effectively influence the behavior of social actors? In its reflection about noncompliance and the international rule of law, Jacob Katz Cogan recognizes that "noncompliance can impede the establishment and maintenance of the international rule of law." The rule of law does therefore not seem to be able to dispense with accountability mechanisms, even if those are decentralized, as in the international legal order.

Studying accountability mechanisms in a legal system raises three questions:

- *who is accountable?* It is often stressed that the rule of law implies that not only the law-breakers be held accountable, but also that decision makers must as well give account of their action. In international law, the focus is naturally put on states, but other actors should also be looked at, such as international organizations or eventually non-state decision-makers;

- *to who must one be accountable?* Ideally, one would think that the ultimate accountees must be the individual stakeholders in the legal system. It was however stressed that, in the international legal system, and also in the EU legal order, very specialized groups of individuals were often able to instrumentalize the accountability mechanisms and the courts in order to reach their particular objectives;

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- for what is one held accountable? In the international legal system, situations giving rise to potential accountability are very disparate, and have not yet been systematized. One must therefore treat them in a disparate manner (ex: managerial accountability in international organizations, chapter VII of the UN Charter, etc. See, for more examples, the case studies below);

3.2.2. The role of courts as accountability mechanisms in the rule of law

In a legal system, courts are usually thought of as the natural accountability mechanism, ensuring effective and equal application of the law. They indeed have several advantages, such as independence, authority and legitimacy, visibility as accountability fora, enforceability and access to individuals (at least in domestic orders, and under certain international legal instruments). They also have certain downsides, such as their cost, and the delays in the procedures. Also, international courts are often not accessible to individuals. Moreover, courts are generally conservative organs, in that their application of the norms is mostly static. Finally, courts usually defend individual interests and are normally inappropriate for defending collective interests such as environmental protection.

From the public international law point of view, the International Court of Justice is the only jurisdiction with general competence over issues of international law. However, the limitation of its mandate to disputes between states and its lack of compulsory jurisdiction seriously undermine its credibility as accountability mechanism in the international legal order.\(^\text{18}\) The World Court is however often described as pivotal in the achievement of the international rule of law, especially in UN literature.\(^\text{19}\)

3.2.3. Diversity in regulation and accountability

Alongside the UN galaxy and the International Court of Justice, a large number of decentralized\(^\text{20}\) international legal regimes have emerged, often developing their own accountability mechanisms, exclusively directed at the norms and actors of the regime itself. This phenomenon participates in the so-called "fragmentation" of international law, witnessing a parallel and uncoordinated development of self-contained legal regimes, each having their own focus and logic, therefore potentially undermining the overall coherence of the international legal order.\(^\text{21}\) The relations between those decentralized accountability mechanisms, general international law and the domestic legal orders are notably being studied by the NYU-led Global Administrative Law project.\(^\text{22}\) In the face of the fragmentation of accountability mechanisms, and of the risks of regulatory competition and loss of coherence it entails for the international legal system, some scholars have suggested that accountability mechanisms and

\(^\text{19}\) See R. HIGGINS, op. cit.
\(^\text{20}\) On a functional (ex: the WTO for international trade issues) or geographic (ex: the European Union) basis
\(^\text{22}\) See http://www.iilj.org/GAL/default.asp
organs should cooperate and form "accountability networks" in order to ensure proper coordination, effectiveness and fairness in holding actors accountable to the law.\textsuperscript{23} Examples of such accountability networks include international networks of auditors, or the European network of competition regulators.

Next to legally established and strongly institutionalized accountability mechanisms, the question of the contribution of more diffuse accountability channels to the rule of law must also be studied, such as for example the social influence of NGOs seeking to hold governments and multinationals into account. Such multiplication of accountability mechanisms and the sometimes questionable legitimacy of certain actors in that field also raise the question of the accountability of accountability players themselves. In a sense, accountability bodies, be they national courts or international watchdog NGOs, are also power wielders and must be subject to the rule of law. As was already pointed out, global regulators also follow a trend of increasing diversity, and must accordingly appropriately be held accountable for their regulatory activities.

Empirical and conceptual research is therefore being conducted in order to identify and promote best practices in accountability, with a view to creating a global language and culture of accountability across the whole spectrum of decision-makers in the international field. Four criteria have been identified to evaluate the level of accountability of a given actor: transparency, participation, evaluation and complaints and responses, and may serve as a basis for organizational learning and change.\textsuperscript{24}

3.3. Case studies

3.3.1. Accountability in conflict and security law (by T. Marauhn)

Conflict and security law includes conflict prevention, \textit{Ius ad bellum} and \textit{Ius in bello}, including notably preventive arms control law.

Preventive arms control law is characterized by a dominance of multilateral treaties, and a sectoral approach. The field therefore undergoes a great level of juridification. The pattern of implementation is cooperative, in that the focus is on states showing compliance rather than on evidencing non-compliance. Compliance procedures of reporting and verification are put in place. Accordingly, enforcement mechanisms \textit{stricto sensu} have a limited role in this field, and disagreements regarding the interpretation of the treaties are settled by traditional dispute settlement mechanisms.

Concretely, the implementation is mostly made through domestic measures, involving general implementing legislation, criminal law and the setting up of an appropriate institutional framework. Member states are then expected to report on their implementation, and mechanisms of "compliance assistance" between members are created, notably with the help of model legislations.


New trends in the field include a shift from cooperative mechanisms to coercive law, and the challenging of the multilateral sectoral approach through the conclusion of separate accords and through parallel legislation by international organizations, such as the UN (ex: the 1540 Committee). The legalist trend in this legal field is also no longer dominant.

3.3.2. International environmental law and human rights: political control, managerialism or rule of law? (by G. Ulfstein)

International human rights law and international environmental law are very different legal disciplines. Human rights law is very substantive and aims at the protection of the individual human being while environmental law mostly creates rights and obligations between states, which are dynamic and technical (ex: emission quotas).

Human rights law is best applied and enforced by courts, and international jurisdictions have successfully been established (ex: the ECHR), though no "World Court" for human rights yet exists. Compliance with environmental law is usually assessed through multilateral, non-confrontational and preventive non-compliance mechanisms. Human rights treaties however also establish supervisory treaty bodies similar to such non-compliance mechanisms. Such non-compliance mechanisms have three main functions: establish facts, assess those facts in relation to treaty obligations, and determine the consequences of non-compliance.

The channels of action of the non-compliance mechanisms are:

- **inter-state complaints**: which are used in human rights regimes, but not in environmental regimes, though certain states may induce the non-compliance organ to investigate a member state;
- **individual complaints**: which are widespread in human rights regimes, but only one international environmental instrument provides for this: the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (which, in a way, aims to protect human rights-like interests).

These first two channels function in a judicial way, establishing the merits of individual cases, and the responsibilities of the various actors. In that sense, they share a role in the promotion of the rule of law. They must therefore meet certain standards in terms of composition, fact finding capacities, and procedural guarantees in order to fulfill their roles satisfactorily. The generally recommendatory and non-binding character of the decisions rendered by such non-compliance bodies however somewhat weakens their effective contribution to the rule of law.

- **supervision of treaty obligations on behalf of the collective of state parties**: which aims at ensuring implementation of the treaties (which may overlap with the role of the first two items above) and at protecting the multilateral interests of all member states.

A meaningful difference between human rights and environmental non-compliance mechanisms has to do with political control: while human rights bodies are generally
composed of independent experts, environmental bodies are generally composed of representatives of state parties, which is usually regarded as a threat to the rule of law.

The establishment of those non-compliance mechanisms has been criticized as mere "managerialism" and negotiation in dealing with legal issues. However, one can notice increasing formalization and procedural guarantees in the mandate and working methods of those non-compliance bodies, maybe suggesting that the contribution of those mechanisms to the rule of law is being taken into account, and that they are becoming more suited for the task of effectively promoting the rule of law.

3.3.3. The rule of law and the Security Council: the new procedures for the legal protection of individuals in the fight against terrorism

In the face of growing transnational terrorist threats, the Security Council established a Committee composed of all its members and managing sanctions (assets freezes and travel bans) imposed on persons suspected of being associated with the Taliban and Al Quaeda terrorist networks. The sanctioned individuals are put on a list maintained and administered by the Committee. The procedures associated with the list (listing and de-listing procedures) have been amended by resolutions 1730 (2006) and 1735 (2006) in order to provide for more "legal protection" of the listed individuals. But to what extent do the new procedures meet internationally accepted standards related to the rule of law? The legal protection standards considered are:

3.3.3.1. the right to be informed of the procedure;
3.3.3.2. the right to be heard;
3.3.3.3. the right to be advised and represented;
3.3.3.4. the right to an effective remedy against abuses before an impartial body.

(a) The listing procedure:

UN Member states are in charge of updating the list and must make a documented statement of fact when they wish for a new individual to be listed, even though they retain a certain margin of discretion in that regard. To reduce the risk of name errors, listing proposals have to be made on the basis of a cover sheet containing personal information about the considered individual. Further, member states must inform their nationals when the latter are listed and imposed a sanction.

(b) The de-listing procedure:

A "focal point for de-listing" was established as an administrative organ within the Committee, and was put in charge of handling individual requests for de-listing. The focal point is to forward the requests it receives to the relevant governments, and to inform the petitioner of the procedure and of the final decision of the Committee. The national government of the petitioner may place the request on the agenda of the Committee, and the designating government may oppose de-listing, even though all members of the Committee are supposed to deliberate on the request. If no action has been taken by the Committee after one month, the request is deemed rejected.

26 See http://www.un.org/sc/committees/dfp.shtml
(c) Assessment

The new procedures are certainly an improvement in comparison to the former regime, in that they add a degree of transparency to the process (mandatory statement of fact by the designating state, establishment of the focal point), and in that they reduce the risk of errors (cover sheet). However, no judicial review mechanism has been established for the procedural or the substantive part of the process and the whole process retains its intergovernmental character. Furthermore, the right to be heard, the right to a counsel and the right to effective remedy is still not guaranteed at all.

(d) Conflicts with the EU legal order

In the EU legal order, such procedural rights are considered to be fundamental principles of law. Therefore, the EU regulations implementing the sanctions against the listed people allegedly clash with those principles. In several decisions, the Court of First Instance of the EU has however declined to review the legality of such regulations when they were merely implementing binding resolutions of the Security Council, save in the case of a violation of *jus cogens*. Appeal has been made of one of those decisions, and the case is pending before the European Court of Justice. The Advocate-General in charge of the case has already rendered his opinion, in which it recommends that the Court enforce the fundamental rights recognized in the European legal order and therefore annul the violating regulation, even if it implements binding international law.

3.3.4. A critical assessment of the World Bank's inspection panel and its contribution to the development of the international rule of law (by Andria Naudé Fourie)

The Inspection Panel of the World Bank was established as a quasi-judicial accountability process to investigate complaints brought by two or more individuals claiming to have been adversely affected by the WB's non-compliance with its international safeguard standards. The Panel is then to make appropriate recommendations to the WB Board. The establishment of the Inspection Panel could allegedly contribute to the development of the international rule of law in three ways: increase the internal accountability of the WB's staff, increase the external accountability of the bank toward its stakeholders, and contribute to the general development of public international law.

To what extent has the practice of the Inspection Panel actually contributed to the international rule of law? As a basis for assessment, four criteria are analyzed, derived from the Secretary-General 2004 definition of the rule of law quoted above:

- *independent adjudication*: the Panel presents itself as independent, its members are independent from the WB Board (they serve in their individual capacity), and it is normally shielded from political influence. It makes

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decisions (including admissibility) independently from the management of the
WB (and sometimes openly opposes it);
- public promulgation of 'laws': the Panel has reaffirmed the binding character
of the Safeguard Policies and its "operational policies and procedures" are
available on the Internet. However, awareness regarding the Panel and the
possibilities of complaint remain low in borrowing countries, with certain
signs of improvement;
- consistency with international legal norms and standards: the Panel has
concluded that human rights standards are incorporated in the WB safeguard
policies (notably civil and political rights, linked to the WB's obligation of
informed consultation), and strictly assesses compliance therewith. Further,
the Panel is mindful of the effectiveness and of the non-discriminatory
character of the grievance procedures;
- equal enforcement: the Panel has criticized the "piecemeal" enforcement of
policies across WB projects. Also, the Panel works increasingly in reference to
its prior cases, thereby contributing to "legal certainty", and it has developed a
consistent approach to assessing compliance.

The contributions of the Panel to the rule of law are therefore significant but limited,
as its mandate is very narrow, and as it has to face repeated political challenges within
the WB. It is also argued that the Panel has failed to fulfill its remedial function.
However, the body of "jurisprudence" that it is building is very interesting for a lot of
rule of law issues, most notably that of the accountability of international
organizations.

3.3.5. The Kimberley Process to Combat "Conflict Diamonds": Accountability at the
International Level on a Shoestring? (by Bruno Demeyere)

The Kimberley Process29 is a multistakeholder initiative aimed at countering the trade
in "blood diamonds", that is, diamonds the sale of which funds rebel groups. The KP
was launched, under consumer pressure, after Chapter VII measures taken by the
Security Council on that issue proved ineffective due to lack of implementation by
UN Member States.

The KP consists of a network of informal agreements between 74 countries according
to which they agree not to purchase diamonds originating from outside their circle,
and to certify that diamonds they trade are not financing guerillas. Blood diamonds
are therefore prevented from reaching markets. The diamond industry was included in
the process as an observer, as well as two NGOs, which were largely self-appointed.

The implementation of the accords is strictly national, and compliance therewith is
monitored inter se by the participating states. No outside or independent
accountability body exists in order to assess compliance and punish violations. Also,
there is no outside normative body against which the actions of the states will be
assessed. States are only accountable to the commitments they took in the framework
of the KP. However, the accountability practices of the KP become more and more
formalized and predictable, the ultimate sanction remaining the exclusion of a state
from the process.

29 See http://www.kimberleyprocess.com/
Several remarks and questions can be formulated with regard to the KP, accountability and the rule of law:

- Is the inclusive (yet selective: cfr the limited number of "participant NGOs") nature of the KP not an obstacle to effective accountability? There are indeed no more outside observers holding the KP into account, or any independent body objectively assessing non-compliance from a formalist point of view.
- Even though the KP was formally endorsed by the UN constituencies, how can one analyze the sidelining of the Security Council to the benefit of an *ad hoc* and rather opaque multistakeholder initiative? What does this say about the place of international law and international organizations in the international rule of law?
- What are the role and virtues of markets in achieving regulatory objectives concurring with rule of law values?
- Is the KP model specific to the blood diamonds issue or can it be transposed elsewhere? Is it a model to be generally advocated for the promotion of accountability and the rule of law?

4. Toward a research agenda

Mark Bovens

Thinnest/annorexic rule of law = habeas corpus. Second rule is the principle of legality. Another is trias politica/checks and balances. Fourth rule is judicial control. In the 18th century this was developed (e.g. Prussia was a liberal Rechtsstaat). In the 19th century a number of political rights were developed and parliamentary democracy/ministerial responsibility. Another layer was developed in the 20th century: number of social rights, expansion of government services and lots of principles of good governance. Gradually, on comes to thicker notions of the rechtsstaat.

Accountability is not a room/floor in itself: it is a relevant mechanism for quite a number of floors. It is necessary to guarantee civil/political rights; social accountability can be important to involve civil society. Legal accountability often relates to civil rights.

What does that mean for a research agenda in international law? Distinction “accountability as a virtue” and “accountability as a mechanism”. Defining elements to see accountability as a mechanism in international law, there are 3 possibilities: (i) internationalized accountability: international actors held accountable by an international forum, (ii) internationalisation of accountability, with domestic actors who have to give account to an international forum (eg ECHM); (iii) domesticated accountability of international actors.

There is a variety of mechanisms at each of these levels: legal, non-legal, social, … What to make of them? How to evaluate accountability mechanisms? (i) are they *effective*? Are they provided with enough information? Can they question actors? Can they produce sanctions, either formal or informal, that really do bite? Are they sufficiently independent to be effective? (ii) are they *fair*, do they provide due
process? Are they transparent? Are the accountability forums accountable themselves? Are they knowledgeable, can they handle the information? Is there fair trial? Is there a fair judgment? Is there a possibility of appeal? Are they impartial?

Why would this be interesting for international law? One sees an increasing globalisation and mobilisation of actors; if power is transferred to the global level, the traditions of the rechtsstaat should be transferred as well. Risk of accountability deficit.

Jan Wouters

There is considerable legal and multidisciplinary research work ahead:

1) the very concept of “rule of law”: taking stock of international practice and critically evaluating it; developing a “modular approach” with certain core modules for the basic concept of rule of law and developing additional modules depending on capacity and the policy field in question; looking at the national legal systems and exploring differences and similarities with the international system; testing whether and to what extent international organisations themselves live up to the rule of law principles they preach vis-à-vis member states

2) developing indicators to measure rule of law (and have a kind of open method of coordination)

3) the relationship between rule of law and other fundamental principles of public international law: sovereignty and non-intervention, human rights; relationship with other notions such as “good governance” and “democracy”

4) studying mechanisms for upholding and monitoring rule of law: including accountability mechanisms of judicial and non-judicial nature, responsive and proactive mechanisms, public and private mechanisms
   
   □ goes to issues such as:
   □ the balance between effectiveness, efficiency and fairness; the role of hegemony versus inclusive participation of stakeholders
   □ the complementary role of the various governance layers: if checks and balances are deficient at the global level, can we introduce them at the European and/or the national level?
   □ This also leads to a a multi-actor and multi-level approach to rule of law
     i. national – EU – global interactions in law and policymaking
     ii. the relation and interaction between public and private actors in enforcing rule of law standards