
Introduction and Key Issues Surrounding Informal International Lawmaking

Ayelet Berman,^{*} Sanderijn Duquet,^{**} Joost Pauwelyn,^{***}
Ramses A. Wessel[†] and Jan Wouters[‡]

1. The Rise of Informal International Lawmaking and Accountability Concerns

The current architecture of global governance includes a variety of different forms of bilateral and multilateral cooperation. At the global level,

^{*} **Ayelet Berman** is a Ph.D. Candidate in the International Law Unit at the Graduate Institute of International and Development Studies in Geneva and a Research Associate at the Centre for Trade and Economic Integration (CTEI). Before her Ph.D. studies, Berman was an Associate at Herzog, Fox and Neeman in Tel Aviv, Israel, and at Sidley Austin LLP in Geneva. Previously, she also held teaching and research assistantship positions in constitutional and administrative law at the Hebrew University of Jerusalem, Israel. She holds a LL.B. magna cum laude from the Hebrew University of Jerusalem, and a D.E.A. in International Law from the Graduate Institute.

^{**} **Sanderijn Duquet** (Master of Laws, Ghent U. and LL.M. International Legal Studies, American U. Washington College of Law) is a Ph.D. candidate at the Leuven Centre for Global Governance Studies and the Institute for International Law, University of Leuven, Belgium, where she works as a research fellow of the Policy Research Centre on Foreign Affairs, International Entrepreneurship and Development Cooperation for the Flemish Government.

^{***} **Joost Pauwelyn** is Professor of International Law at the Graduate Institute of International and Development Studies in Geneva. He is also Co-Director of the Centre for Trade and Economic Integration (CTEI) and Senior Advisor with the law firm of King and Spalding LLP.

[†] **Ramses A. Wessel** is Professor of the Law of the European Union and other International Organizations and Co-Director of the Centre for European Studies, University of Twente, the Netherlands.

[‡] **Jan Wouters** is Professor of International Law and International Organizations, Jean Monnet Chair Ad Personam EU and Global Governance. He is Director of the Leuven Centre for Global Governance Studies and of the Institute for International Law at the University of Leuven, Visiting Professor at Sciences Po (Paris) and at the College of Europe (Bruges), member of the Royal Academy of Belgium for Sciences and Arts, *Of Counsel* at Linklaters (Brussels), and President of the Flemish Foreign Affairs Council.

alongside the more traditional way to create international law through the conclusion of treaties or customary law, for a number of decades now there has been a tendency to engage in alternative methods to generate international agreement.¹ Indeed, although for most pressing trans-boundary issues such as trade, investment, health, finance and human rights, institutional frameworks have been established for many years and are fully operational, regulators have simultaneously been looking for less institutionalized forms of rule-making. One of the most commonly heard justifications for this observation is the search by States, sub-state entities and private actors to engage in interaction across national borders that results in more desirable, detailed and effective regulation in technical or highly political matters.² It is this understudied category of international rule-making, which we have coined as *informal international lawmaking* (IN-LAW) that is the object of research in this book. The book aims to make an empirical contribution to the debate of international lawmaking in the 21st century by analyzing entities that have been playing a role in international or transnational normative processes in a variety of policy areas.

A central criticism of informal international lawmaking has been that it falls outside of the strictures of both international law and domestic law, and that it consequently suffers from an accountability deficit. The objective of this book has, hence, not only been to provide an ‘objective’ overview of cases of informal international law, but also to approach and assess these cases from an accountability perspective.

2. The IN-LAW Project

This book is one of the many fruits of a research project entitled *Informal International Lawmaking*,³ launched in November 2009 for a two-year period and sponsored by the Hague Institute for the Internationalization of

¹ Kal Raustiala, “Form and Substance in International Agreements”, in *American Journal of International Law*, 2005, vol. 99, no. 3, pp. 581–614.

² See Joost Pauwelyn, Ramses A. Wessel and Jan Wouters, “The Exercise of Public Authority through Informal International Lawmaking: An Accountability Issue?”, Jean Monnet Working Paper 06/11, available at <http://centers.law.nyu.edu/jeanmonnet/papers/index.html>, last accessed on 26 February 2012; Charles Lipson, “Why Are Some International Agreements Informal?”, in *International Organization*, 1991, vol. 45, p. 500.

³ For further project information, see <http://www.informallaw.org>, last accessed on 28 June 2012.

Law (HiilL). Together with the academic promoters, researchers of the three participating institutes – the Graduate Institute of International and Development Studies in Geneva, the University of Twente and the Leuven Centre for Global Governance Studies/Institute for International Law at the University of Leuven – engaged in a prolific cooperation that has resulted in an edited volume published with Oxford University Press (OUP),⁴ five workshops bringing together more than 40 scholars and practitioners, and a show case event at the 2011 HiilL Law of the Future Conference in The Hague. From the outset, the project aimed to be empirical and solution-oriented: selected IN-LAW activity was mapped based on in-depth case study research, publicly available primary sources and interviews. The aforementioned OUP book, *Informal International Lawmaking*, sets out the IN-LAW framework and methodology.

3. The Methodological Framework of IN-LAW

When writing chapters, contributors have examined their cases from an IN-LAW and accountability perspective. These notions have been defined, for the purpose of this project, as follows.

3.1. The Definition of Informal International Lawmaking

The term ‘informal’ international lawmaking is used in contrast and opposition to ‘traditional’ international lawmaking. More concretely, IN-LAW is informal in the sense that it dispenses with certain formalities traditionally linked to international law. These formalities may have to do with the *process, actors and output* involved.⁵ It is along these three criteria that we define Informal International Lawmaking: first, in terms of ‘process’, international cooperation may be ‘informal’ in the sense that it occurs in a loosely organized network or forum rather than a traditional treaty-based international organization. Such process informality does, however, not prevent the existence of detailed procedural rules, permanent staff or a physical headquarter. Nor does process informality exclude IN-LAW in the context or under the broader auspices of a more formal organization.

⁴ Joost Pauwelyn, Ramses A. Wessel and Jan Wouters (eds.), *Informal International Lawmaking*, Oxford University Press, Oxford, 2012.

⁵ Joost Pauwelyn, “Informal International Lawmaking: Framing the Concept and Research Questions”, in Joost Pauwelyn, Ramses A. Wessel and Jan Wouters (eds.), *Informal International Lawmaking*, Oxford University Press, Oxford, 2012, pp. 13–34.

Second, in terms of ‘actors’ involved, international cooperation may be ‘informal’ in the sense that it does not engage traditional diplomatic actors (such as heads of state, foreign ministers or embassies) but rather other ministries, domestic regulators, independent or semi-independent agencies (such as food safety authorities or central banks), sub-federal entities (such as provinces or municipalities) or the legislative or judicial branch. While the focus is on cooperation among governmental actors, it can also include private actors and/or international organizations. Third, in terms of ‘output’, international cooperation may be informal in the sense that it does not lead to a formal treaty or any other traditional source of international law, but rather to a guideline, standard, declaration or even more informal policy coordination or exchange.⁶

On the basis of this methodological framework, we aim to highlight elements of normative global processes that *prima facie* fall outside the traditional scope of ‘law’ but may nevertheless be seen as forming part of a law or rule-making process. All contributors to this book use this terminology and build on this definition.

3.2. The Definition of Accountability

Accountability has many definitions, but we can generally distinguish between a broad and a narrow definition.

Bovens defines ‘accountability’ as “[a] relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pose judgment, and the actor may face consequences”.⁷ This definition is narrow. When operationalized, the definition limits us to examining mechanisms that provide judgment *after (ex post)* a decision or action has already been taken. It also limits us to looking at mechanisms that have a sanctioning element. Examples of such accountability mechanisms are electoral, hierarchical, supervisory, fiscal and legal.⁸

⁶ Pauwelyn, 2012, see *supra* note 5, pp. 15–20.

⁷ Mark Bovens, “Analysing and Assessing Public Accountability: A Conceptual Framework”, in *European Law Journal*, 2007, vol. 13, no. 4, p. 450.

⁸ Richard Stewart, “Accountability, Participation, and the Problem of Disregard in Global Regulatory Governance”, Draft paper, January 2008, available at <http://www.iilj.org/courses/documents/2008Colloquium.Session4.Stewart.pdf>, last accessed on 28 June 2012.

A broader definition of accountability, which is common in international relations scholarship, refers to it as ‘responsiveness’ to the people,⁹ or put negatively, ‘disregard’ of the people.¹⁰ This definition is broader because when we operationalize it, we can look at a broader set of measures that promote accountability, and are not limited to accountability mechanisms in the narrow sense. The attention goes to criteria such as transparency, participation of stakeholders, decision-making rules *et cetera* – criteria that arguably promote accountability too, but fall short of accountability mechanisms in the strict sense. Moreover, rather than being limited to *ex post* oversight, the timeline of the broader approach is longer and includes examination of measures at all stages: *ex ante* (before a decision has been made), ongoing (during the decision making process), and *ex post* (after a decision has been made).

Another relevant question is accountability to whom? To whom should informal international lawmaking bodies be held accountable? Here, too, we distinguish between two categories: internal and external stakeholders. First, accountability can be owed to actors who entrust the makers of IN-LAW with the power to set norms (think of participating countries, responsible ministers in those countries or the people/parliament who elected those ministers). These are the internal stakeholders. Second, accountability can be owed to actors that are affected by an IN-LAW body and its output (think of non-member countries, industries and consumers). These are external stakeholders.¹¹

Furthermore, typically composed of domestic actors, accountability measures can exist at both the international and domestic level.

In line with the project’s problem oriented approach, we take a broad approach to accountability. This means that in examining IN-LAW bodies, we are interested in accountability mechanisms in the narrow sense (such as courts), as well as accountability promoting measures (such as transparency, decision-making rules, and participation of stakeholders). These accountability measures may be before, during or after a decision

⁹ Anne-Marie Slaughter, “Agencies on the loose? Holding government networks accountable”, in George Bermann, Matthias Herdegen and Peter Lindseth (eds.), *Transatlantic Regulatory Cooperation, Legal Problems and Political Prospects*, Oxford University Press, 2001, p. 523.

¹⁰ Stewart, 2008, p. 1, see *supra* note 8.

¹¹ Ruth W. Grant and Robert O. Keohane, “Accountability and Abuses of Power in World Politics”, in *American Political Science Review*, 2005, vol. 99, no. 1, p. 38.

has been taken. They may also be at the international or domestic level. The project is also interested in the extent to which IN-LAW bodies are accountable towards both internal and external stakeholders. This broad analytical framework is the framework within which the contributors to this book have worked, and each of the case studies addresses or focuses on specific aspects of accountability within this framework. The case studies analyze whether – and to what extent – IN-LAW bodies are subject to some form of accountability and, if so, in what form and at what level. The assessments at the case study level also include the search for the most suitable mechanisms and venues to hold the relevant actors accountable at the international and domestic levels.

These challenges are further complicated by the search for effectiveness in cross-border cooperation. Many of the IN-LAW bodies in fact are considered well-equipped to perform coordination functions across functional divides, to set more coherent policies and action, and to effectively tackle the cooperation problems where formal forms of lawmaking failed. Yet, it should be kept in mind that a certain tension may exist between accountability and effectiveness. Strengthening domestic or international accountability measures may for example come at the cost of effectiveness of the IN-LAW process. Some of the case studies, accordingly, consider this tension in their respective contexts and discuss when and whether the enhancement of accountability is beneficial for the effectiveness of the body and vice versa.

4. Relation Between this Book and the OUP Informal International Lawmaking Book

Both the OUP book *Informal International Lawmaking* and this book bring together efforts to solve the above-mentioned problems in a way that can assist policymakers and stakeholders. Their starting point is, however, different. The present volume reflects the core of the research effort undertaken and is to be seen as the bundling of *empirical studies* on the organization and effects of non-traditional international lawmakers. The omnipresence in the international spectrum of IN-LAW, and its impact in topics as diversified as financial, investment and competition policy, as well as in areas of health, food, social and human rights regulation, are assessed. The contributions to the OUP book on the other hand assembled overall lessons from certain issue areas at a more conceptual level. All of the chapters in *Informal International Lawmaking* were written

with the case studies presented in this book in mind; they cross-refer to them and take advantage of the empirical data uncovered during the entire IN-LAW project. Therefore, the editors considered it important for a good understanding of the overall theory to also publish these case studies as they are the result of in-depth research by experts in a variety of regulatory fields.

5. Case Study Selection

This volume bundles case study research on a selection of IN-LAW, all of which bear the potential to directly impact on national regulators and private actors. The editors aimed to generate information on IN-LAW bodies active in a significant number of policy fields in order to draw on comprehensive datasets in the second, theoretical, phase of the project to proceed to a controlled comparison of selected cases.

The selection criteria applied at the start of the project to identify informal international lawmaking networks as object of our research still stand. The focus is on cross-border cooperation related to the global economy that should, preferably, be considered ‘informal’ in all three senses (output informality, process informality and actor informality). While most case studies are indeed informal in all three senses, we have also included several cases that do not cumulatively fulfill all three levels of informality and are informal at only one or two levels (for example WHO food standards).¹²

Furthermore, being a legally focused project, IN-LAW bodies that were selected had acquired some level of institutionalization (in the form of a website, address, formal meeting place *et cetera*), and created normative output beyond mere meetings or exchange of information (such as declarations, standards or guidelines). The selection of the case studies on different topics enabled us to address the question to what extent informal lawmaking is more successful in some policy fields than in others and why.

The case studies compiled in this book only cover part of the IN-LAW story. The present book does not aim to, nor can it, offer a full view on IN-LAW mechanisms. Rather, a balance was sought between the editors’ aim to enable the reader to survey the omnipresence and heteroge-

¹² Pauwelyn, 2012, see *supra* note 5, pp. 32–34.

neity of IN-LAW (horizontally) and the need to present results of thorough research on specific specialized networks (vertically).

All fourteen case studies selected for this volume apply the IN-LAW methodological framework to a number of informal international lawmaking mechanisms. As we collected data in a broad range of policy fields, we explored variation in the studied levels of IN-LAW and related key issues such as accountability and effectiveness. Informality in lawmaking indeed raises these additional questions both at the domestic and at the international level.

6. Structure of the Book

The structure of this volume is as follows. Fourteen self-standing case studies were categorized in three thematic parts.

In **Part I, Regional and Country Specific Case Studies**, four case studies were selected to discuss domestic and regional elaboration and implementation of IN-LAW. In *Chapter 1* Jan Wouters and Dylan Geraets discuss a relatively new yet highly influential informal actor on the world stage, the *Group of Twenty* or G20. Although membership of the G20 comprises five continents, two-thirds of the world's population and approximately 80% of world trade, it remains by invitation only and therefore exclusive. Informal rules are upheld that limit membership in this 'club' to a selected number of countries that are considered 'systemically important' in international economic and financial matters. Furthermore, as Wouters and Geraets argue in their contribution, the G20 was never aimed to be a universal network or to become the forum for negotiations to reach a binding treaty. Amongst others for these reasons the authors consider it one of the most wellknown IN-LAW bodies, which despite its restrictive membership has considerable impact at the global level.

Chapter 2 by Takao Suami offers insights in the activities of the regional Asia Pacific Economic Cooperation or *APEC*. The author analyzes the extent to which APEC resulted in liberalizing trade in goods and services as well as in facilitating foreign investment in the Asia-Pacific region while relying on informal processes and producing informal output. The use of informality in lawmaking is far from uncommon on the Asian continent. Yet, APEC serves as an atypical example of IN-LAW, mainly because the author considers its activities policy-making rather than lawmaking. In particular, the author's argument that APEC cannot be incon-

testably labeled lawmaking *per se* was of great significance in the development of other case studies and in the further refinement of the overall IN-LAW theory.

The other two chapters of Part I focus specifically on the impact, elaboration and implementation of IN-LAW at the domestic level in selected countries. In *Chapter 3*, Leonard Besselink argues that international law's effect is increasingly to be located within the national legal orders and subsequently looks for the concrete manifestations thereof in the Netherlands. The author examines the status and implementation of the output of informal international lawmaking in a monist EU Member State. This is highly relevant to the IN-LAW discussion since monist States premise themselves on the unity of international and national law and consequently consider (duly consented) international obligations to be part of the 'law of the land'. Besselink also links his assessment of the modes of entrance of non-traditional international law to the manners in which the constitutional bodies of government and parliament, as well as stakeholders, are involved in the creation and implementation of informal international law. The author furthermore contributes to the conceptualization of issues of accountability and democratic legitimacy in the Dutch, European and global context.

In *Chapter 4* Salem Nasser and Ana Mara Machado take the reader to Brazil to answer the question of how IN-LAW is dealt with in a local context that differs considerably from the one discussed in the previous chapter. Brazil can be considered a 'moderate monist country': although treaties in principle automatically enter the Brazilian domestic legal order upon ratification, Brazilian courts have consistently held that for this to happen, the Presidency has to issue a decree promulgating the treaty, as would be the case in a dualist country. The authors consider two levels of lawmaking: first, the international, by analyzing Brazil's participation in specific IN-LAW networks, and, second, the national by analyzing the implementation of selected IN-LAW regulations and output. The reader is provided with a complete overview of the different stages of the IN-LAW timeline: from the reasons for creating it to its specific impacts. Here, too, as in Besselink's contribution on the Netherlands, accountability, legitimacy, and the rule of law in the sphere of Brazil's relatively young democracy are discussed.

In **Part II, Finance and Competition**, international financial and competition rules are analyzed which have become articulated through in-

formal accords. A range of trans-boundary market and institutional mechanisms, regulators and funds that have shaped the international financial and competition architecture are discussed in detail. Informal international lawmaking has been employed for decades in international financial regulation, which has developed into an IN-LAW area of research par excellence.¹³ In *Chapter 5*, Shawn Donnelly takes an overview approach to financial market regulation and zooms in on a large number of regulators and standard-setters, amongst others the Basel Committee on Banking Supervision, the International Organization of Securities Commissions, the OECD's Committee on Corporate Governance, the Financial Stability Board, the Financial Action Task Force, and the G7/G20. Donnelly argues that the world has seen an increase of IN-LAW in financial regulation and focuses on specific accountability problems related to this trend. Highly interesting in this regard is the author's overview of the networks in analytical categories of various degrees of institutionalization, their respective level of formality and accountability.

Chapter 6 by Maciej Borowicz takes a considerably different starting point and analyzes the roles of IN-LAW and of transnational private regulation (TPR) in global financial regulation specifically to avoid and address market failures. Multi-level governance theories are used to review transnational regulatory safety nets, that is, arrangements designed to protect societies from paying for losses that financial institutions may incur, taking both public and private perspectives. The author's thesis is concretized in comprehensive research on the International Swaps and Derivatives Association ISDA (in the news recently as the institution with the authority to decide whether Greece's March 2012 bailout package amounted to a 'credit event'), as an example of TPR, and the Basel Committee on Banking Supervision, as an example of IN-LAW. Complementing the research effort undertaken in the previous chapter, the contribution delves into the debate on private governance of market regulation and its effects on IN-LAW.

Chapter 7 looks at IN-LAW answers to regulating sovereign wealth funds (SWFs), the government controlled investment vehicles engaging in

¹³ See David Zaring, "International Law by Other Means: The Twilight Existence of International Financial Regulatory Organizations", in *Texas International Law Journal*, vol. 33, pp. 281–330. Zaring describes international financial "regulatory organizations as acting secretly and neither promulgating treaties or laws nor having the bureaucracies in place to monitor or insure the implementation of their promulgations".

foreign direct investment and/or portfolio investment. Elissavet Malathouni examines whether the International Forum of Sovereign Wealth Funds (IFSWF) can be classified as an informal international public policy-making forum and whether it suffers from an accountability deficit. Special attention is given throughout the chapter to the Santiago Principles, a set of 24 voluntary standards on best practices for the operation of SWFs, promulgated by the International Monetary Fund and the International Working Group of Sovereign Wealth Funds. More concretely, their unclear status under international and national law and the effectiveness of this voluntary code of conduct is assessed.

Megan Smith discusses the global framework for responsible investment in inclusive finance in *Chapter 8* on the United Nations Principles for Responsible Investment (UNPRI), which she considers ‘an excellent example of IN-LAW’. She furthermore links responsible finance, competition and trade governance to the topic of informal lawmaking in the context of the United Nations, which as a global international organization is for obvious reasons assimilated with formality in cross-border cooperation. Yet, despite its connection with the UN, most actors involved in UNPRI are ‘informal’, as they are not central State representatives. Moreover, businesses and industries play a double role as they are one of the governing actors in UNPRI and at the same time constitute the ‘targets of regulation’ of this informal regulatory initiative. This observation is of importance as the Principles rely on the market, via reputational accountability, to be effective. Challenges observed are, first, the need to increase – and maybe even formalize – committed membership and, second, to uphold current standards of transparency, accountability, and enforcement.

In *Chapter 9*, the final contribution to the finance and competition part, Pierre M. Horna analyzes how accountability and effectiveness go hand in hand in two Latin American competition networks, the Central American Group of Competition and the Andean Committee for the Defense of Free Competition. This case study relies on the use of primary sources, questionnaires and interviews to assess Latin American cross-border cooperation which arguably suffers from an accountability deficit and network effectiveness. A core point for discussion taken up by the author is whether networks profit from the opportunities offered to them by past failures and successes and how they can use past experience to adapt

accordingly in order to fully realize the learning dimension of accountability.

Part III, Health, Food and Social Standards, turns to the topic of health, food and social standard-setting in an IN-LAW context. The reader becomes acquainted with a wide variety of public and private regulations that all ultimately aim to enhance global safety and justice. Although somewhat controversial, the authors address the respective social standards under review in light of global and regional trade regulation.

Ayelet Berman in *Chapter 10* investigates medical products regulation bodies that meet the three IN-LAW criteria of process, output, and actor informality: the International Conference on the Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH), the International Cooperation on Harmonization of Technical Requirements for Registration of Veterinary Medicinal Products (VICH), the Global Harmonization Task Force, and the International Medical Devices Regulators Forum. This chapter analyzes common features, such as governance structures and decision-making procedures, shared by informal networks that promulgate technical, scientific guidelines on different subject matters of human health and animal health.

In *Chapter 11*, questions of harmonization of technical requirements for products and processes are also addressed by Sanderijn Duquet and Dylan Geraets in their chapter on food safety standards. The authors provide an overview of the current food safety governance regime, which is characterized and influenced by the multi-actor context in which the phenomenon of standard-setting on this subject takes place. Their case study involves both public and private trans-boundary networks which set standards: bilateral networks, Mercosur, the EU, the Codex Alimentarius Commission, the World Health Organization (WHO), the International Organization for Standardisation (ISO), the Global Partnership for Good Agricultural Practice and the Global Food Safety Institute. A fundamental question answered by the authors is how these actors, and more specifically the public and private food safety standard-setters, coexist and what role the IN-LAW framework plays in enhancing food safety cooperation.

In *Chapter 12*, Ina Verzivolli studies in-depth from an IN-LAW perspective the WHO's International Code of Marketing of Breastmilk Substitutes, which regulates marketing practices of breastmilk substitutes. The author links the global framework to domestic practices, by evaluating the implementation level and strength of overall measures adopted by

India, Malaysia, and The Philippines and by including this in her general assessment of the effectiveness of the Code in the aforementioned countries.

In *Chapter 13*, Luca Corredig addresses the IN-LAW components of schemes of global resilience against disasters. He argues in favor of enhanced vertical interaction between the international, national and community levels as well as of horizontal cooperation across the different actors operating at each level. The International Strategy for Disaster Reduction (ISDR) represents an interesting example of network-based informal international cooperation and arguably even lawmaking. Like other authors, he focuses on how accountability impacts upon effectiveness. However, unlike other authors, Corredig stresses that overall IN-LAW, within the specific context of the ISDR system, should not raise major concerns in relation to the question of accountability deficit.

Chapter 14 contains a case study by Victoria Vidal on the Kimberly Process (KP) on 'blood diamonds'. In her analysis, the author raises two different kinds of accountability questions: first, she analyzes accountability and legitimacy of the network itself; in a second step, the focus is on the accountability of the KP owed to external stakeholders. These questions are to be distinguished from the equally important assessment of the effectiveness of IN-LAW in the case of the KP. The chapter concludes with a section on the strengths and weaknesses of IN-LAW answers to prevent the trade in diamonds that fund conflict, and offers potential solutions.

7. Carrying the Debate Further

The plethora of case studies makes the present volume an original and noteworthy contribution to the understanding of significant transformations in international lawmaking. The ubiquity of IN-LAW in numerous regulatory fields is reflected in the essays that cover a vast range of substantive matters. From these case studies it transpires that, over the years, the rise of globalization processes in the economic and technological field has demanded ever-growing international governance responses. The present book analyzes non-traditional normative processes, how and to what extent these are used, as well as the driving forces behind the networks and the extent to which these *de facto* may have similar effects as traditional legal rules.

A great asset of all case studies is that they address concerns relating to the democracy, legitimacy and accountability of informal lawmaking. Bearing in mind the vague legal status of most norms and standards covered, when evaluating the implementation of IN-LAW output, researchers consider principles of good governance, the rule of law, and traditional checks and balances systems. Next to this, and although ‘purely’ private cooperation falls outside the scope of the project, participation of private actors in IN-LAW bodies otherwise populated by public officials is another very present theme. For the sake of comparison, a number of authors also describe private networks, which provides useful insights. Indeed, IN-LAW can benefit from private experiences and often hinges on private participation for its success. As shown in Chapter 5 on financial market regulation as well as in Chapter 11 on food safety standards, the expertise of a large pool of regulators and other actors can lead to more dynamic regulation, sensitive to global and regional changes and evolutions. The contributors to this volume are all concerned with the question of whether informal cooperation at the international level effectively promotes change at the international, national and sub-national levels, as this is what is generally aimed for in most networks. Drawing from these case studies, it can be observed that IN-LAW bodies generally are well-equipped to grasp certain complex global trends and the resulting uncertainty and rapid changes that come with them.¹⁴ In financial market regulation as well as standard-setting in health, food safety and human security, IN-LAW bodies provide a large number of much needed flexible norms and guidelines, that are grounded in practical experience, consensus-building and expertise. An important overall feature is the possibility to continuously correct IN-LAW, taking into account new developments and learning. This being said, some caution is still due. The contributors to this book judged the level of accountability differently depending on the IN-LAW body or regulation under review. In Chapter 13 on disaster risk reduction practices, for example, accountability has not been considered a major issue, whereas many other authors, when assessing the same issue, remain critical and formulate ways to improve responsiveness and

¹⁴ See also: Joost Pauwelyn, Ramses A. Wessel and Jan Wouters, “Informal International Lawmaking: An Assessment and Template to Keep It Both Effective and Accountable” in Joost Pauwelyn, Ramses A. Wessel and Jan Wouters (eds.), *Informal International Lawmaking*, Oxford University Press, Oxford, 2012.

inclusiveness, in order for the IN-LAW bodies to become fully accountable.¹⁵

In short, by compiling and structuring the research efforts of experts in a great variety of regulatory fields the present book provides the reader with insightful views on informal international lawmaking. The case studies substantiate the IN-LAW theory and indicate the extent and complexity of the outstanding issues. As indicated above, while encompassing and detailed, the present volume cannot and does not aspire to offer a full view on IN-LAW mechanisms. However, through the carefully selected 14 contributions compiled in this volume, we have attempted to grasp in a practical way the manner in which international lawmaking is evolving and to contribute to elucidate and carry further the academic debate on the fascinating IN-LAW phenomenon.

¹⁵ See, *e.g.*, Chapter 1 on the G20, Chapter 5 on financial market regulation and Chapter 9 on competition networks in Latin America.