Book Review

Geert de Baere and Jan Wouters (eds)

The Contribution of International and Supranational Courts to the Rule of Law

The elusive concept of the ‘rule of law’ is usually approached from a constitutional law perspective, especially when one considers the work of eminent theorists, scholars, and philosophers such as Aristotle, A.V. Dicey, or Joseph Raz. The problem with this concept (and the related, yet slightly different notion of Rechtsstaatlichkeit) has always been the lack of defining criteria. Is the rule of law a mere formal principle in the sense that procedural attributes are sufficient, e.g. through the generality, equality, and certainty of the law, regardless of its content? Or is a more substantive approach required, i.e. that the law also has to protect individual rights?

The book at hand not only has the ambitious aim of delving into such theoretical intricacies, but also to examine this issue from the perspective of international and supranational courts. In the prologue, Judge Antonio Augusto Cançado Trindade at the International Court of Justice (ICJ) correctly points out that the existence of such a thing as the rule of law on the international legal level is not a given, and that we are therefore privileged to witness its emergence and subsequent consolidation through the creation and operation of multiple international tribunals. In his view, it is now time to realize justice by expanding international jurisdiction beyond the classic subjects of international law and to include individuals as well. This introductory theoretical framework of the book is then complemented by a framework for analysis, elaborated by Geert de Baere, Anna-Luise Chané, and Jan Wouters, which provides the reader with a historical overview of the multiplication of international courts, the distinction between supranational and international judicial bodies, an exploration of possible conceptions of the rule of law, the political context and institutional safeguards of judicial independence and impartiality,
and a comparative analysis of the many ways in which international courts may arguably strengthen the rule of law.

The main part of the book is divided into three substantial parts which are dedicated to global courts and tribunals, regional courts, and tribunals pertaining to particular situations, respectively. Quite naturally, the part on global courts starts with an analysis of the contribution of the ICJ to the rule of law. In this respect, Philippe Couvreur draws attention to the fact that the main merit of the Court lies in clarifying the general principles of international law and in guaranteeing the unity of interpretation of international law against fragmentation, most importantly in the form of other international courts and tribunals. Subsequently, Kenneth Chan and Jan Wouters investigate the International Criminal Court's rule of law identity. Sitting at the intersection between international law, domestic law, and transitional justice processes, this court is largely guided by the domestic rule of law in order to demonstrate awareness of the local impact of its decisions. After that, Peter van den Bossche discusses the jurisdiction of and access to the World Trade Organization (WTO) dispute settlement system, its problems, and unique status. Its deficiencies lie, however, in its overwhelming success in resolving disputes among WTO members; paradoxically, its principal flaw is that this fact could create an institutional imbalance in the organization between the 'judicial' and the 'political' branches which may eventually prove detrimental to the international rule of law. Lastly, Philippe Gautier concludes this part with an analysis of the contribution of the International Tribunal for the Law of the Sea to the rule of law, which focuses on issues such as access to the Tribunal, its functioning, and the admissibility of claims. In an area as globally relevant as the law of the sea, these issues are not only closely related to the need to administer justice promptly and efficiently, but also to ensure reparation of damage caused vis-à-vis States as well as private persons under their protection. In this context, in particular the more recent Arctic Sunrise case comes to mind.

The following section on regional courts is entirely dedicated to the most prominent regional courts in existence, namely the European Court of Human Rights (ECHR) and the Court of Justice of the European Union (CJEU). This approach may be criticized as being one-sided and overly Euro-centric, yet given these courts' success in establishing and consolidating legal orders of their own and hence their contribution to the rule of law, this specific selection seems to be duly justified. In this regard, Paul Lemmens points out that the ECtHR always uses the rule of law as an interpretational tool in combination with a concrete provision of the European Convention on Human Rights, which aims at both setting limits to State action (by protecting individuals against arbitrary State action and legal uncertainty) and to oblige States to take