International Law and European Administrative Procedure: Interaction and Mutual Impact

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A. The Quest for International Legal Principles for European Administration

This paper studies the potential impact of international law on the codification of administrative procedure in the law of the European Union. Which international legal rules apply to administrative procedures on the domestic or supranational level? About a century ago, this would have been a moot question. International law then only addressed inter-state relations. Each state had the liberty to organize its domestic affairs, including administrative procedures, in nearly complete independence. Today, this has profoundly changed. International law addresses many issues that were once believed to relate to the domaine réservé of domestic jurisdiction.¹ Globalization, democratization, technological innovation, and the increasing recognition of the role of individuals have contributed to this development.² This has not remained without effect for domestic administrative procedures. Many international legal regimes have a bearing upon administrative procedure: among the main drivers of this development are free trade

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¹ Cf. E. Jouannet, Le droit international libéral-providence. Une histoire du droit international (Bruxylant 2011); M. Goldmann, Internationale öffentliche Gewalt (Springer 2015), part 1.
agreements; but human rights, investment, and environmental treaties; and soft legal frameworks like the Basel Accord also make a contribution. On the whole, a plethora of international legal rules and case law with significance for administrative procedure penetrates domestic legal orders.

How to provide an overview of these requirements? A simple list would not be very helpful for the codification project at hand. Instead, I would like to elaborate some principles which one might derive from these requirements. This might not only provide a better overview, but also advance the codification project: the EU administrative procedure might benefit from a focus on abstract principles since it will have to be applied to many different cases and subject matters. For this reason, I will first say a few words on the nature and formation of principles (B.) and then explain five pertinent international legal principles which domestic and European administrative procedure should respect (C.).

**B. International Legal Principles: Nature and Formation**

Let me clarify at the outset what I understand as principles. Sometimes, this term might be confusing because we use it for different things. For the purposes of this paper it would be important to distinguish two types of principles.

The first type of principles is bottom-up: General principles of law are a proper source of international law. They are usually extrapolated from domestic legal orders by means of analogical and comparative reasoning. A general principle of law is an unwritten legal rule of wide-ranging character recognized in the municipal laws of States and applicable to the international legal order. General principles thus derive from a comparison of domestic legal orders, like the one carried out by the Swedish Agency for Public Management on administrative principles in EU member states. Like domestic law, an administrative procedure in the EU will have an impact upon general principles of law and will contribute to their development.

But the focus of this paper is on top-down principles. Top-down refers to principles of international law governing domestic administrative procedures. What characterizes these principles? They emerge from

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6. This is why Koskenniemi designates them as “normative” general principles, see M. Koskenniemi, “General Principles: Reflexions on Constructivist Thinking in International Law” in M Koskenniemi (ed.), Sources of International Law (2000) 360-402, 364-5.
8. A. Pellet, “Article 38”, in A. Zimmermann et al. (eds), The Statute of the International Court of Justice (OUP 2006), marginal no. 249.
international legal rules, especially treaty provisions and the case law related to it. True, many of these rules are very specific, addressing a particular issue area and requesting a particular kind of behavior from domestic administrations. The decisive question is whether there is a consistent pattern of rules requesting comparable kinds of behavior in comparable situations. This is what one can consider as a principle; a principle of international law. It is therefore necessary to make a synthesis of existing international legal rules in order to discover principles.

The legal status of such principles might differ, depending on the consistency of a certain pattern of rules, as well as on their significance. Some of these principles might reflect established or emerging general principles of law – even though this paper does not explore their basis in domestic law. Others might represent established or emerging customary rules. Again others do not correspond to a specific source of international law, but are purely doctrinal constructions. Despite their weaker status, they might guide interpretation and law-making. It is therefore a matter of prudence to take them into account in the design of an administrative procedure for the European Union.

By way of a disclaimer, it would further clarify the legal status of the principles if domestic law as well as the administrative practice of international organizations were included. The existence of comparable rules applicable to comparable contexts in different legal orders might especially reinforce the case for general principles of law. However, this is beyond the scope of the paper. The other papers presented at this hearing will shed some light on these questions.

### C. International Legal Principles for EU Administrative Procedure

The organization of the following principles receives orientation from the principles annexed to the resolution of the European Parliament on EU administrative procedure law from 2013. This resolution lists ten principles. In the interest of space and comprehensiveness, I will lump some of them together, which leads me to a list of five principles: (1) proportionality, (2) lawfulness, non-discrimination and legitimate expectations; (3) fairness and due process; (4) respect for privacy; (5) transparency, information and consultation. Aspects concerning impartiality as well as efficiency and service, two further principles listed by the EP resolution, will be considered under due process. For each of these five principles, I will provide an approximate definition of their content, an overview on international legal rules reflecting that content, and conclude with an assessment of the legal status of these principles and their significance for EU administrative procedure.

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12 On the difference between principles of international law and general principles of law, see W.G. Friedmann, *The Changing Structure of International Law* (Stevens & Sons 1964), 196 et seq.
13 For a taxonomy, see Goldmann (note 7).
17 Lawfulness; non-discrimination and equal treatment; proportionality; impartiality; consistency and legitimate expectations; respect for privacy; fairness; transparency; efficiency and service.
1. Principle of Proportionality

**Definition:** Proportionality designates a certain mode of legal reasoning which consists in the balancing of diverging legally protected interests. It is usually a step in the examination of restrictions upon rights and other legal entitlements. One might consider proportionality as a purely substantive standard. As such, proportionality has a long tradition, reaching back to scholastic writings and just war theories of early modernity like those of Grotius and Pufendorf. However, as a mode of legal reasoning, there is also a procedural side to proportionality. Proportionality tests define a number of steps which the administration needs to follow when making a decision. The procedural and substantive sides of proportionality seem to be closely related. Proportionality therefore has a place in a codification of administrative procedure.

**Relevant international rules:** A wide array of international legal regimes requires proportionality tests on the part of domestic administrations, including the EU. Some of these proportionality requirements address relations among states, others address relations between states and citizens.

For the former, the principal area of application is World Trade Law. The agreements which are part of the WTO legal framework regularly subject domestic restrictions to free trade to proportionality tests. The best known example is Art. XX GATT, which provides for general exceptions from the duties under GATT. It contains two different proportionality standards: measures protecting public morals, health, and law enforcement need to be “necessary” to achieve their purpose, while other measures only need to “relate to” a specific purpose. For the necessity test, WTO jurisprudence nowadays takes resort to a balancing exercise. The analysis considers the significance of the protective purpose, the effects of the restriction on free trade, and its contribution to the realization of that purpose. Some understand necessity as imposing a stricter test than the “relating to” standard. But one should not overestimate the difference between these standards. As the Appellate Body has emphasized in the US – Shrimp case, the “chapeau” of Article XX GATT imposes a general duty of good faith on the contracting parties. This provides important protection against arbitrary restrictions and discriminatory practices, effectively a uniform standard which one might qualify as the minimum core of proportionality.

Some decisions tend to further proceduralize the obligations deriving from proportionality tests. In the EC – Hormones case, the Appellate Body decided that domestic standards which are higher than applicable international standards need to be supported by scientific evidence such as risk assessments.

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20 For other proportionality tests cf. Art. XXI, GATT; Art. VI:4 and XIV, GATS; Art. 2.2 and 5.6, SPS Agreement; Art. 2.2 and 2.5, TBT Agreement.


23 Crawford (note 18) no. 14-16.


vein, the International Court of Justice has held that states are obliged under general international law to carry out environmental impact assessment if a proposed project might cause harm for another state or shared resources.27 Nevertheless, although necessary, such assessments alone do not make a measure proportionate. Rather, they need to produce sufficient evidence – or the absence thereof, as the case may be. Thus, neither the WTO Appellate Body, nor the International Court of Justice accepts the precautionary principle, which would permit restrictive measures when potential risk is uncertain.28

In human rights law, proportionality tests have by now been established in almost all relevant regimes. For the European Court of Human Rights (EChTR), proportionality is a key principle.29 The EChTR has established proportionality as a Europe-wide standard for human rights limitations in Europe, even in jurisdictions where it did not exist before, like the United Kingdom.30 Proportionality finds a textual basis in some of the rights guaranteed by the European Convention on Human Rights and Fundamental Freedoms (ECHR), which require restrictions to be “necessary”.31 Necessity might relate to the needs of a democratic society, of public security and safety, etc. However, multiple layers of casuistry have sometimes blurred the requirements of proportionality tests.32 They are further complicated by the need to grant member states a margin of appreciation in areas where there is no convergence on the content of rights.33

Like the European Convention, the International Covenant on Civil and Political Rights does not contain an explicit proportionality requirement. Nevertheless, many individual rights provisions require restrictions to be necessary, or reasonable.34 In investment law, proportionality tests are steeply on the rise.35 For example, the distinction between legitimate regulation and indirect expropriation has been considered to be a question of proportionality.36

Result: On the whole, proportionality is by now deeply entrenched in international law as well as in domestic legal orders, including EU law. One might therefore consider it a general principle of law which is binding upon domestic administrations. It needs to be observed whenever regulatory purposes get in conflict with the rights and entitlements of others, whether they are individuals or states.

However, the contours of proportionality are not always clear and vary from one regime to another. One might identify two trends: first, there is a tendency of courts and tribunals to harmonize their proportionality tests, even if their textual basis differs, and to extend their scope of application. Second, given the difficulty of balancing widely diverging rights and legally protected interests, courts and tribunals tend to keep their tests flexible. One way of doing so consists in the inclusion of procedural

27 ICJ, Pulp mills on the river Uruguay (Argentina v. Uruguay), judgment of 20 April 2010, para. 204.
30 Crawford (note 18) no. 13.
31 Cf. Art. 8-11, ECHR.
34 E.g. ICCPR, Art. 19 (freedom of opinion: restrictions need to be necessary for the protection of the rights of others etc.), Art. 21, 22(2) (right of peaceful assembly and freedom of association: restrictions need to be necessary in a democratic society), Art. 25 (right to take part in the conduct of public affairs: no “unreasonable restrictions”).
36 Tecmed v. Mexico, ICSID Case No. ARB(AF)/00/2, Award, 29 May 2003.
elements in their proportionality tests. Another way consists in the development of sophisticated doctrines, such as the margin of appreciation.

These difficulties should not prevent the codification of proportionality as a principle of EU administrative procedure. However, members of parliament should keep in mind that this standard is difficult to control for a legislator. Textual differences tend to be levelled down. Instead, one uniform definition seems advisable which spells out broad criteria of a proportionality test while providing sufficient space for flexibility in individual cases.

2. Lawfulness, Non-Discrimination and Legitimate Expectations

Definition: These three standards are related in many ways, which is why I have lumped them together in one principle. In essence, they are all about the prohibition of arbitrary treatment. To this end, official conduct should be prescribed by law, equally applied, and respectful of legitimate expectations. Like proportionality, this principle addresses a rather substantive issue. Nevertheless, it is intrinsically related to the conduct of administrative procedures. It therefore has a place in a codification project.

Relevant international rules:

Lawfulness:

International law knows many rules according to which restrictions upon the rights and liberties of individuals need to be prescribed by law. Although only some human rights provisions explicitly provide so, using different language,\(^{37}\) this is today a recognized standard of human rights law.\(^{38}\) According to the case law of the ECtHR, the relevant restrictions need to derive from acts adopted by parliament, should be accessible and sufficiently precise.\(^{39}\) In investment law, the fair and equitable treatment standard usually requires the lawfulness of measures of the host state.\(^{40}\) Most bilateral investment treaties (BITs) require expropriations to be provided by the law.\(^{41}\)

Non-discrimination:

As regards non-discrimination, international law makes a remarkable difference between human rights and free trade. Most human rights regimes prohibit unjustified discrimination among citizens, but usually only with respect to the enjoyment of the rights guaranteed by the relevant instrument.\(^{42}\) Only some specific conventions like the Convention on the Elimination of All Forms of Racial Discrimination or the Convention on the Elimination of All Forms of Discrimination against Women prohibit certain types of discrimination across the board. By contrast, international economic law usually prohibits discrimination for reasons of national origin.\(^{43}\)

\(^{37}\) E.g. Art. 13 ICCPR (expulsion); Art. 8(2), 9(2) ECHR, Art. 1 First Protocol to the ECHR.


\(^{41}\) E.g. Art. 5(2), French 2006 Model BIT; Art. 4(2), German 2008 Model BIT.

\(^{42}\) E.g. Art. 14 ECHR, Art. 2 ICCPR, Art. 3 Convention Relating to the Status of Refugees.

\(^{43}\) E.g. Art. III GATT, Art. 4, 5.5 SPS Agreement; Art. 5(2), French 2006 Model BIT.
Legitimate expectations:

The protection of legitimate expectations is among the key concerns of the fair and equitable treatment clauses contained in many bilateral investment treaties. The fair and equitable treatment standard has undergone extensive interpretation on the part of investment tribunals. They frequently gloss over the wording given to this standard in individual treaties. But there seems to be broad consensus that this standard demands respect for investor’s legitimate expectations.\textsuperscript{44} This raises the question: what are legitimate expectations?\textsuperscript{45} In essence, and to cut a very long story short, the disappointment of legitimate expectations requires a policy change of the host government of an investor. Hence, the crucial issue is which policy changes an investor needs to expect. Opinions diverge widely.\textsuperscript{46} Some tribunals apply a relatively liberal approach. They hold that the ambit of legitimate expectations depends on the purpose of the treaty. Changes in policy need to be proportionate to that purpose.\textsuperscript{47} Similar is reliance on good faith.\textsuperscript{48} Other tribunals take contextual factors into account and ask whether the specific circumstances of the case gave rise to legitimate expectations.\textsuperscript{49} However, this might have costs for legal certainty. Therefore, some tribunals rely on specific representations by the host state on which the investor could reasonably rely.\textsuperscript{50} In trade law, legitimate expectations of producers play an important role when a state changes its product regulations. The predictability of trade relations is a core concern for the rule of law on the international level.\textsuperscript{51} Domestic policy changes have an impact on importers which resembles that of an external administrative act.\textsuperscript{52} However, unlike investment law, trade law does not substantially restrict regulatory practice. Rather, it requires states to make their policy changes predictable. Thus, they might have to allow for a reasonable period of time to pass before new regulations take effect so that producers may adjust their products. Or, as the Appellate Body decided in the famous Shrimp case, states might have to organize their internal procedures in a transparent and predictable way.\textsuperscript{53} The protection of legitimate expectations thereby dissolves into procedural requirements.

Result: The requirement of lawfulness appears to have acquired the status of a general principle of law. It is one of the most important rule of law requirements that should necessarily be included in a codification of administrative procedure. International protection against discrimination is far less comprehensive and fragmented in international law than in the legal order of the European Union. There is little which EU law could learn from international law here. By contrast, the protection of legitimate expectations is of enormous concern for international law. One might even qualify this as an emerging general principle of law. However, its precise contours are controversial. Procedural requirement like the WTO approach have


\textsuperscript{45} UNCTAD (note 44) 63 et seq.

\textsuperscript{46} \textit{Occidental Exploration and Production Company v. Ecuador}, LCIA Case No. UN 3467, 1 July 2004, para. 183.

\textsuperscript{47} \textit{Tecmed v. Mexico} (note 36), para. 153.

\textsuperscript{48} UNCTAD (note 44) 67.


\textsuperscript{50} \textit{Waste Management Inc v Mexico}, ICSID Case No ARB(AF)/00/3 (NAFTA), Award, 30 April 2004, para. 98; LG&L v. Argentina, ICSID Case No. ARB/02/1, decision on liability, 3 October 2006, para. 119. See, however, UNCTAD (note 44) 71 et seq. on the question whether and when the investor needs to expect policy changes.

\textsuperscript{51} Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels, A/RES/67/1, 30 November 2012, para. 8.


the advantage that they do not paralyze domestic regulation, while providing sufficient protection for individuals. Although this approach involves the risk that some investment tribunals might consider it insufficient, it has considerable benefits for an administrative procedure law.

3. Fairness and Due Process

Definition: Although fairness might be considered a substantive standard, I would like to focus here on its procedural aspects. They are tantamount to due process guarantees. One might distinguish general due process guarantees from specific obligations like the duty to give reasons and the right to be heard, or the right to an effective remedy.

Basis:

General due process guarantees:

On a general level, due process is certainly one of the most important aspects of the rule of law. Nevertheless, far-reaching due process guarantees have been recognized in international law only in relation to criminal proceedings – where they are probably most necessary. A general due process guarantee is not contained in human rights instruments.

It was for the International Tribunal for the Law of the Sea (ITLOS) to give recognition to due process as a general duty of states towards individuals. In the Juno Trader case, the tribunal was called upon to decide whether Guinea Bissau had violated its obligation to promptly notify the flag state of a detained vessel of that fact and to release the vessel upon deposit of a reasonable bond. Not least because of the peculiar circumstances of the case, it read into these specific obligations a general duty of fairness. Judges Mensah and Wolfrum point out that the Tribunal should only attach legal significance to confiscations of the coastal state if they respect due process. This important precedent was later confirmed in the Tomimaru case. In a similar direction, WTO dispute settlement panels have recognized the right to an effective and expedient administration.

Duty to give reasons; right to be heard

In contrast to a general duty of due process, the more specific obligations of a duty to give reasons and a right to be heard find wider recognition in international law. It is useful to distinguish between human rights law and trade law.

Many international human rights guarantees oblige governments to give reasons for their measures affecting individuals, and stipulate a right of individuals affected by those measures to be heard. This often concerns serious infringements of personal liberty like arrest and expulsion. The ECtHR has extended the requirement to give reasons to restrictions of other rights where such a duty is not explicitly

54 Cf. Declaration (note 51), para. 12.
55 Art. 6(2) and (3), ECHR; Art. 14 (2) to (7), ICCPR; see also General Comment No. 35 (2014) of the CCPR, para. 12.
57 Ibid., Joint and Separate Opinion, para. 6
58 ITLOS, Tomimaru Case (Japan v. Russian Federation), Judgment No. 15, 6 August 2007, para. 76.
60 E.g. Art. 9(2), 13 ICCPR; Art. 5(2) ECHR.
mentioned, such as free speech. Along these lines, international refugee law establishes duties to inform refugees of the decisions about their status, and also to provide guidance and interpretation etc. In such constellations, the right to be heard and the duty to give reasons seem to constitute an essential aspect of the human right which is at stake.

By contrast, in international trade law, the requirement to give reasons seems to serve the detection of protectionist purposes or discriminatory measures. This requirement is widely recognized in trade law. For example, with respect to safeguard measures, the Appellate Body requires member states to give “reasoned and adequate explanation”. The Shrimp case recognized the duty of states to grant a right to be heard and to be given reasons when they require a certification from importers.

International investment law seems to take an intermediate position. Investment tribunals have criticized the lack of reasoning of domestic institutions or demanded a right of investors to be heard. Interestingly, they applied the fair and equitable treatment standard. This standard provides protection to individual investors on an individual basis, but it might also eliminate protective measures.

**Right to a remedy**

Only in select cases, international law obliges states to guarantee the right to a remedy. In a European context, the most fundamental provision in this respect is certainly Art. 6(1) of the ECHR. However, its scope of application is limited to criminal and civil proceedings. Although this includes public law entitlements, it excludes litigation in most administrative matters, such as migration disputes, access to public service, and taxation.

Beyond human rights, many BITs require host states to grant a right of review in case of expropriation. World trade law shows a mixed pattern. On the one hand, emergency action under Art. XIX GATT does not give rise to a need for judicial review. On the other hand, measures affecting specific GATS commitments or countervailing measures do entail judicial review. Probably the highly political nature of emergency measures might account for the difference.

**Result:** It seems that due process is well established as a general principle of law. There is a consistent pattern of international legal obligations of states to respect due process. The pattern is more fragmented if

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62 Art. 32(2) and 33(1) of the Convention on the Status of Refugees requires reasonable grounds for decisions which adversely affect refugees; further non-binding duties are stipulated in: UNHCR, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status, 2011 edn., para. 189 et seq.
63 Hepburn (note 61) 647.
64 Overview: Hepburn (note 61) 645 et seq.
66 See above, note 53.
67 Joseph Lemire v. Ukraine, ICSID Case ARB/06/18, Decision on Jurisdiction and Liability, 14 January 2010, para. 315 et seq. The failure to provide reasons might even elevate an otherwise normal contractual breach to the level of a breach of the fair and equitable treatment standard: Rumeli v. Kazakhstan, ICSID Award ARB/05/16, 29 July 2008, para. 615.
68 Tecmed v. Mexico (note 36).
71 Falcon (note 52) 230f.
it comes to specific due process obligations. The right to be heard and to be given reasons depends on the purpose of the legal provisions at stake. A right of judicial review only exists in the specific cases for which it has been recognized. Nevertheless, it would be difficult to rely on the differences between the various subject areas in the design of a European administrative procedure law. Human rights and economic concerns sometimes overlap; and it is by no means impossible that international due process requirements will further develop in the foreseeable future.

4. Respect for Privacy

**Definition:** Respect for privacy is on the one hand a human right. In the context of administrative procedure, data protection seems to be the most important aspect of this right. The following focuses on the latter.

**Basis:** Provisions on data privacy are widespread, intense and far-reaching in Europe, but not in general international law. In fact, after some preparatory works and recommendations in the frame of the UN, the OECD, and the Council of Europe, legislation in this area began with the adoption of domestic data protection laws in Europe in the 1970s. An important step was the adoption of the Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data by the Council of Europe in 1981. It stipulates that data protection should be supervised by a separate administrative authority.

In 1984, the ECtHR recognized that data privacy constitutes an aspect of the right to privacy guaranteed by Art. 8 ECHR. Accordingly, governments need to regulate interceptions of telecommunications, provide access of individuals to personal data stored by governments, and to delete certain sensitive personal data after use. As this shows, respect for data privacy is in some respects concomitant with respect for lawfulness and proportionality.

The European Union has further advanced data privacy protection by a number of measures. They made the EU the global standard setter in this field. By contrast, international law beyond the European context does not go beyond recognizing a general duty to protect personal data. Chances are high that a European administrative procedure law will have more influence on international law than vice versa.

5. Transparency, Information and Consultation

**Definition:** The last principle unites two related, but different aspects. First, transparency refers to public access to publicly held data. Second, information and consultation are participatory rights which make an administrative procedure transparent to those specifically concerned by it.

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74 Overview: Malanczuk (note 73) no. 2.
77 Malanczuk (note 73) no. 6.
78 S. Gutwirth, Serge (ed.), *European data protection coming of age* (Springer 2013).
Basis:

Transparency as public access

Since about the last third of the 20th century, transparency in the sense of public access has been on the rise in many jurisdictions around the world.\footnote{J.M. Ackerman and I.E. Sandvoal Ballesteros, “The Global Explosion of Freedom of Information Laws”, 58 Administrative Law Review (2006) 85-130.} In international law, many international organizations have improved public access since the 1990s.\footnote{Cf. A. Bianchi and A. Peters (eds.), Transparency in International Law (2013).} However, there are surprisingly few international legal rules which oblige states to grand public access to information.

In fact, most of these rules concentrate on environmental law. In this area, transparency is believed to foster compliance. This idea dates back to the Rio Declaration of 1990. Principle 10 states that “environmental issues are best handled with the participation of all concerned citizens at the relevant level.” However, the Rio Declaration is not binding upon states. Specific transparency duties are contained in environmental regimes like the Aarhus Convention.\footnote{Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters; see also D. Klein, Umweltinformation im Völker- und Europarecht (Mohr Siebeck 2011).} It grants not only a right of access to information, but also of participation and judicial review to the general public. The Aarhus Convention has been implemented into the law of the European Union.\footnote{Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information.}

Information and consultation

International law knows a relatively broad array of specific duties of information and consultation, or notice and comment, which states need to respect viz-à-viz international organizations, other states, or individuals. Normally, such rights only arise when the right-holder is specifically affected by measures of the obliged state.

Many modern multilateral treaties stipulate duties of states to inform international organization, e.g. in the frame of monitoring procedures. However, this is of little relevance for an administrative procedure law. An exception would be the UNESCO World Heritage Committee. For example, in the case of the Waldschlösschenbrücke, it requested the city of Dresden to provide a visual impact study.\footnote{S. Battini, “The Procedural Side of Legal Globalization: The Case of the World Heritage Convention”, Jean Monnet Working Paper 18 (2010), 30-1.}

More numerous are state-to-state obligations. They populate international environmental and trade law. In the \textit{Pulp Mills} case, the ICJ concluded that Uruguay had violated its duty to notify Argentina of its planned project in order to prevent potential damage.\footnote{ICJ, \textit{Pulp mills on the river Uruguay} (Argentine v. Uruguay), judgment of 20 April 2010, para. 113.} Although the judgment is based on the specific provisions of a particular treaty, its significance might reach well beyond that case.

Trade law today includes comprehensive duties of notification and comment for states if they want to take measures affecting trade. This comprises both abstract-general rulemaking, and concrete-individual decision-making.\footnote{Falcon (note 52) 230.} States do not only need to notify other states of their regulatory activities, but also to establish enquiry points in order to facilitate the life of market participants.\footnote{Art. 10, TBT Agreement. Cf. WTO Secretariat, Transparency Provisions of the TBT Agreement (2002).} The \textit{Shrimp} case was of primordial importance in this respect. It based such obligations on the proportionality requirement of Art.
XX b) GATT. Anti-dumping measures oblige the state taking them to disclose the evidence against the affected party. Beyond the benefits that this provides for the affected individual producers, one should also not ignore that such requirements might deter protectionist practices.

International law stipulates some duties of information and consultation regarding state-citizen relationships. The fair and equitable treatment standard implies a duty to act transparently. World Bank Operational Policies on environmental assessments require borrowers to conduct public consultations with affected groups and local NGOs. This comprises a duty to provide information prior to consultation. Somewhat surprisingly, though, the ICJ in *Pulp Mills* favored a narrow treaty interpretation and did not recognize a duty of Uruguay to consult the affected public.

Result

It is controversial whether international law at present knows a general duty of states to grant public access. Even if this is answered in the affirmative, the content and scope of such an obligation would be controversial. In any event, it would be less extensive than the standard of access to information in the law of the European Union. By contrast, participatory rights of states are relatively well established in international law whenever a state is specifically affected by another state. However, truly administrative participation rights of individuals only seem to exist where they have been specifically provided for in the international legal framework.

D. Conclusion

In domestic law, administrative law has two objectives: to serve the protection of individuals and the effective discharge of governmental duties. The preceding overview shows that international law is at this stage mostly concerned with the protection of individuals, or states, not so much with administrative effectiveness.

Depending on the subject matter, the standard of protection under international law differs. State-citizen relationships are in the focus of human rights related relevant international legal rules, while state-state relationships matter more for trade law. Investment law takes an intermediate position. However, for a European administrative procedure law, such a distinction would be impracticable. In many cases, issue
areas overlap, and some fields are developing fast. Hence, a minimalistic approach to the implementation of international obligations in EU administrative procedure would not be advisable.

The binding character of the five principles elaborated in this paper is mostly limited to their abstract versions and does not necessarily extend to the more specific ramifications of each principle. In this respect, the codification of administrative procedure in the EU could substantially advance the development of international law, especially general principles of law.