

Friday June 1st 2018

Summary of Day 1 by Joe Hironaka, UNESCO – Rapporteur of Day 1

(the following text is a summary of main statements of the presentation. A youtube video captures the full session here: <https://youtu.be/qRVdZrRR-vs>)

The rapporteur Joe Hironaka summarized the day 1 sessions, where more than 200 experts and 33 speakers attended and interacted within the multiple sessions. All participants had taken note of the “Hague Global Principles, for Accountability in the Digital Age”

The Rapporteur reiterated the statements that confirmed that the digital world (ICT/AI) is a powerful tool to achieve the Agenda2030 SDGs and to leave no one behind (inclusive in terms of age, disabilities, social biases). He described the various normative standards and standards-setting bodies that were focused on the digital domain, including UNESCO's R.O.A.M. Principles, and Media and Information Literacy (MIL) programs that address the digital divide both in terms of accessibility and in terms of rights and ethics.

This session was well delivered to prepare the participants for a Public Consultation on the concept text “The Hague Global Principles for Accountability in the Digital Age”

Workshop: Public Consultation concept text “The Hague Global Principles for Accountability in the Digital Age”

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Co-moderators:

- Arthur van der Wees, Institute for Accountability in the Digital Age
- Prof. Marta Pertegas Sender, University of Antwerp

In this vibrant workshop with lots of interactions between the panelist and the participants from the floor, the first impressions of the “Hague Global Principles” were discussed.

The panelist started the presentation to scope the challenges of Accountability, not just a layer for consideration but rather a huge dimension of its own such as privacy, personal protection, data protection, security and safety. Accountability is connected to all these dimensions.

The panelists also described the role of the Institute for Accountability in the Digital Age (I4ADA) organization as a research institute that wants to study accountability in terms of implementation gaps, best practices and provide systematic support as a neutral platform based in the Hague.

A call was made to the audience to share best practices, regulations, standards, standards-setting bodies to create a repository that could be used as a learning and guidelines base to create more efficient accountability systems, especially in sensitive domains related to Human Rights, where higher than normal accountability systems may be required.

Just before opening the discussion to the floor, the Panelists gave the example of the GDPR as a model law, especially GDPR Article 25 and Article 32 which are examples of new, most advanced regulation in terms of accountability. The idea of “state of the Art” by default was noted despite of possible tradeoffs in terms of cost of implementation to have a maximum impact. It was noted that the State-of-the-Art security is a guiding principle for both the Producers and the Implementors, where all parties have to review its security needed to ensure “impact” in terms of overall interactivity and accountability of interactions within the system considered.

The panelist also gave an example of Burning Man, and the established principals of Burning Man which can be found online, and that did not enforce privacy statements but rather called for a human to human based convention on how to engage with each other.

The panelists stated that more examples are needed, in order to build a roadmap for the future of accountability. The panelist called for more examples from the audience (stating past examples of privacy law and net-neutrality processes). It was stressed that we need to understand the blind gaps and learn from each other. And that in no case, will accountability have a negative impact on the achievement of the Agenda2030 SDGs but rather, increased accountability will have a positive impact and drive the digital world for all (i.e. Governments, Citizens, consumers, and end-users) both in terms of upholding rights and regulations. Nonetheless, checks and balances would have to be put in place to ensure that users would know where to go in terms of right to redress, recourse and remedy, which are the main elements of accountability. It was noted that accountability is a shared program for everybody and that we would have to work together to ensure that international law provides the necessary and required provisions to respond to the challenges of technological and innovative changes. Just like, the law of the sea created hundreds of years ago, today we are able to best address the accountability challenges of the Internet.

The panelist stresses that “feasibility” and “desirability” are two different things, as all that is desirable may not be feasible and vice versa. It is therefore important to disentangle the whole scenario to find good practices to complement the initial discussions that could contribute to an ulterior final declaration for organizations, and that may contain a common will and a common understanding of the government of the Hague, UNESCO, ITU, civil society to best address this issue of accountability.

The discussion from the expert participants on the floor followed (delivered as statements by individual participants from the floor):

- Special considerations must be made for the tracking of users, cookies and shadow profiles should be forbidden
- Technologies that are used by academics and startups need to foster accountability within academic fields and that an oversight institutional mechanism is required.
- The private sector has developed its own charter of trust with 9 principals. This initiative is driven by Siemens, HP and other industries found that the notion of “ownership” is important as a way to move forward, and to ensure sufficient willingness from the industry to sign on, just like for Encryption, Security that is implemented in products, services and infrastructure.
- Ethics are important considerations. We need to increase accountability and participation from all stakeholders

- Accountability has to be defined as a subject to enforcement and the ability to set binding rules to hold accountable
- Proposition to review “German road traffic regulation” as they contain cross border rules with inherent enforcement system across national borders (while taking into account cultural differences such as the UK driving on the left side of the road). This is therefore a good source of inspiration to building accountability and enforceable regulatory systems. Additionally, fines (or money based) are good incentive mechanisms that are effective for enforceability within the principals
- Taking into consideration of who is missing from this panel, it is important to note that these are mainly European speakers, while some are from the US and Asia. So, it is important not to use the term “Global” in the “Hague Global Principals” as it is not representative and premature, especially given cultural differences in Japan (also with regards to GDPR)
- We need to build a bottom up “trust based model” in terms of ownership and also in terms of self-regulating principals as proposed by the UNESCO's R.O.A.M. Model and its Media and Information Literacy (MIL) program. We need to ask how we can make more user aware of these tools
- We need to further define the notion of Trust: Who are we dealing with in terms of authentication and identification and ask how a digital identity could help support accountability
- When we talk about an open and free internet, we should ask secure for whom, for the individual or for the state. While some cultures protect the individual and others protect the holistic view of the state. So, understanding this will make a cross regional approach important.
- It is important to make rules binding as this increases efficiency and feasibility, but we have to understand at which level they should be binding. Otherwise, without this consensus, it will only be a campaign.
- Mutually agreed norms are important for society, where people can come together to increase the norms. Self-organization can help to define what we expect from each other based on minimal expectation.
- Establishing a subsidiarity level is important in terms of being responsible and after accountable.
- The Dutch government MFA supports the initiative and the conference discussion are important and challenges. In its current state, it seems the principals do not serve as a starting point for a discussion and seems to be drafted in a void. The principal critique is that the document is too broad and too vague and is therefore open to broad interpretations and potential misuse. Also, it seems to be disconnected on the principals of the internet debate held in international inter-governmental organization discussions and norms.
- the title “Hague global principals” has a rather governmental term, and that is explicitly not the intention as you have just summarized
- it reflects a level of intention that is quite tricky with regard to the whole debate on internet policy
- we need to broaden the debate with more global participation
- The universality of Human rights both offline and online have not been clearly stated in the document setting. It's not clearly stated
- Does not state earlier accomplishments (UN, civil society, private sector)
- there is much more to build upon. This meeting is a starting point, with fundamental rewriting to win the endorsement of the Dutch government.
- Security, data protection, privacy and all are complex problems. The paper is more for road-mapping and starting points. And therefore, everyone is accountable. We have to starting small with small things, like the European commissions had started, and consumer rights also contained elements of user rights, and data rights
- the paper is working toward the principals, in a non-political way to win insights, and that's why we are not ready. Principals that are missing is INNOVATION, and how to integrate innovation into the process. We should allow for the good for technology, and ethical by design (IGF discussions) and how does this look like.
- Sandboxing, play around market with high regulations could be a way forward.
- Global principles contain nothing about openness and accessibility. There should be.
- We should take inspiration from the International Criminal court, as even 50 after the creation, little happened, because of cold war. However, Yugoslavia and Rwanda did inspire from some of the frameworks developed at the ICC. Holding people (and organizations) accountable starts from somewhere, and hopefully from here. So, let's keep that in perspective. It should not only be governmental because that is why the ICC is not working as well.
- Member of British government states that a Free open and secure cyberspace versus a peaceful cyberspace (balancing individual privacy and security) to make sure that everyone, and states are held accountability. The UK gov. looked at these principals, and they have the essential qualities can tackle corruption and prevent abuse of the internet. It's a good text, and good balance between as a starting roadmap for developments in terms of respect for rule of law. It could be strengthened to apply online and offline and in terms of Internet safety trustee and encourage public consultation.

Panel III: Instruments for Accountability in the Digital Age

(the following text is a summary of main statements of the presentation. A youtube video captures the full session here: https://youtu.be/L_S3K8E9-c0)

Panelists:

- Arthur van der Wees – Institute for Accountability in the Digital Age (**Moderator**)
- Paul Nemitz, Directorate-General Justice and Consumers, European Commission
- Professor Dan Jerker B. Svantesson, Co-Director, Centre for Commercial Law, Bond University, Australia

This session discussed instruments and approaches to creating accountability tools and mechanisms on the internet.

We can be inspired from the European Data Protection Regulation and the recent GDPR in terms of instruments, models and process. We realize that there are some key important issues and viewpoints at stake.

While disruptive technologies can provoke new questions and concerns as for example the impact of a global internet on application of law, issues of extra-territoriality of national laws over national jurisdictions. This disruptive nature of technology and innovation should take care, to not unfairly disrupt democracies, legislative development bodies and the rule of law. For example: concerns were expressed, for example the impact of a violation of rights on the global internet and the application of national law, and/or issues of extra-territoriality of national laws over national jurisdictions (e.g. given data may be stored or transiting in different jurisdictions).

Both speakers presented different viewpoints that could challenge democratic legitimacy especially in terms of jurisdiction and territoriality, with concern to the right to protect both the consumer (global and national) and the citizen (national).

Paul Nemitz described that the European Data Protection Regulation was a result of 6 years of intense dialogue with many stakeholders. There were over 4000 amendments to win the majorities in both the EU parliament and member states. Key learnings are two opposing views of the world - the classic and the engineering view.

- The classic view of constitution democracy, with three pillars namely rule of law, fundamental rights and democracy, where binding rules are created in a democratic process and is decided by what is called the principal of essentiality (essential as it touches the fundamental rights of the individual or the very functioning of society: "For instance the basic questions of democracy, is decided by the legislator. Which has the democratic legitimacy that is let's say the theory of constitution democracy.").
- The Engineering view is different. One source is John Perry's declaration of independence of cyberspace in 1996, where he said, "on the internet, you governments, you parliaments, you democracies, you have no legitimacy. We don't want you here, we don't want your rules, we will deal with any issues of the internet with ourselves".
- "It seems that these two approaches still resonate in the discussions today, also in this room."
- "Democracies must legislate between Populism and Technocratic absolutism. "the technology aspect of let's go to market and we will see, let's roll it out, must also have its limits. Disruption doesn't mean where we can break the law".
- "Rule of law, democracy and fundamental rights function and I do not like this whizzy-washy term: accountability"
- "Please read the case on the "right to be forgotten" case with google. And the only law and only judge is in California law. They are telling Europeans, you have right a democracy, you may have rights, but when it comes to google, you must come to California to resolve your case. Hopefully things have moved on since. So, we have to move on."
- "Where rule of law works on the internet. Courts must work in favor of rule of law"
- "there must be institutions to enforce the law, because of the power balance between the googles and the country. We cannot rely on MIL (media and information literacy) to favor society, the businesses will win over, we need legislative powers to step in to enforce rules, so we have to strengthen the government."
- "We cannot leave consumer protection rules to the individual"
- "Where there is power concentration, there is ambiguity of the empowerment of the internet and the exploitation. This is true for any technology. It can serve to great purposes, and it can also serve other purposes. We as society have to balance the right of the state"
- "example of challenges in the police system, that e-evidence is often outside the jurisdiction of the state, so we need laws to protect the individual and at the same time to ensure efficient criminal procedure. Self-regulation will not work, we need laws... especially for cloud servers."
- "The state has a role that needs to be strengthen rather than weakened."
- "Financial markets should support compliant companies (with build it design) who respect the rule of law and the rule of privacy"

Prof. Jerker B. Svantesson exposed that "creation of instruments of accountability can be found in history, and are namely driven by four forces of law, market, norms and architecture. In this case internet architecture. To this we can add contract as instruments of accountability in the digital age". However, "law is not always the most important. Our behavior

is more regulated than law.” and “while many countries share many values, talked about here, not all countries share all values that are discussed here. So even within the EU and similar value systems we still see different value systems” and overall coexistence is most important.

- “On the internet we see a different matter, online risks may come from people outside the territory and when we go beyond our country and other people are affected by the laws outside our countries.”
- “And as soon as we have a law that comes from outside the national law system, we have a sense of anti-democratic behavior where the people who are governed by the law are not the same ones elected the representatives into place.” These are simplistic, but important points.”
- “Microsoft Warrant Case, supreme court in February (i.e. If Microsoft hands over the data they might be violating EU law, if they don’t hand over the data they might be violating US law). It is a problem for Microsoft, but it is also a broader problem. And it is a nice example of competing issues. Society needs strong privacy protection and society needs rule of law. Both sides relied on territoriality but it is not working there.”
- “Ultimately, we need to protect jurisdiction to ensure peaceful coexistence.”
- “In the EU view, any domestic law that creates cross border obligations should be applied and interpreted in a manner that is mindful international considerations law. The EU should stick to this philosophy when applying the GDPR, but that could be a challenge.”
- “1935: territoriality issues: Harvard draft convention. Core thinking of jurisdiction. We need to move away from territoriality. Territorial is not well established in international law. So, we have great freedom on how rules of jurisdiction are structured”.
- “Jurisdiction is core of territorial law: “A state may only exercise jurisdiction when there is substantial connection to the matter, the state has legitimate interest in the matter, and where they have taken into account a balancing of relevant interests involved. They are a core of our jurisdiction thinking, and could inspire our thinking on territoriality”

Panel IV: The role of the Media in Accountability in the Digital Age

(the following text is a summary of main statements of the presentation. A youtube video captures the full session here: <https://youtu.be/QaNIhZZ6FjM>)

Panelist:

- Dr. Indrajit Banerjee - Director knowledge Societies UNESCO (**co-moderator**)
- Dr. Andrew Taussig, Former BBC Foreign Language Director (**co-moderator**)
- Neil Chase, Executive Editor Mercury News and East Bay Times
- Almar Latour, Publisher and Executive Vice President, Dow Jones Media Group (WSJ)
- Huib Modderkolk, Investigative Journalist Volkskrant

This session focused on the role of media and accountability in the internet age, the notion of trust, trustworthiness of reports and reporting mechanisms we discussed and highlight as important especially given the traditional media business models and revenue streams have been falling. The discussion also focused on protection of “privacy of sources” via protection of anonymity and digital encryption tools in a post-truth world.

In general, Media plays a significant role by providing accountability by (revealing) scams case, and whistleblowing around the world. They share their understanding of what is going on and provide accountability to the public. Nonetheless, the media should itself be held accountable, as moderator Dr. Banerjee stated “Accountability of the media itself, who guards the gatekeepers, who watches over them. It is an important issue because of the dramatic effects of the (social) media on traditional media. How will it affect them in 10 years from now”.

Neil Chase elaborated that Media organizations can also play the role of watchdogs, “we have rules, and as media, the only thing we have is trust. If users do not trust us, we are challenged. We face challenges in the US, with the invention of the term “fake news”. Recently more than seven organizations were created in the US to help with the renewing of trust in the media. It was a quick response to a unique surprising context, and today “Media (companies) put more information online about who owns them and how they create reports.”

Almar Latour, publisher for Dow Jones Media, said that “we ask ourselves every day on how to tell the truth. What is the truth, and it’s become harder every day, because of the widespread of sources and this touches on the future of journalism. The media has a bias for volume to appeal to the masses and has used advertising as a business model. And that has led to a delusion of content quality. And that puts pressure on the business model and that creates a cyclic model. The chasing of volume and large scale audiences generated the move to generalities and doubling down on expertise or level of authority.”

- “We are investing in that, to create a community around experts, with the advantages that he community itself has on cleansing and qualitative aspect of the content. and this pushes a high membership or subscription that belongs to a group. Paid membership to access the scale of delusion is effective.”
- “Verification on the quality of the content can also happen in the newsroom. Upfront verification. With a company called story-full that conducts verification with sourcing checking, Cross referencing, geotags, to identify the legitimacy of certain sources tells a story on a rapid pace, and some companies are actually making money out of this service.”

Just like the “Education of Consumers (MIL) and could also be one for Journalists to ensure deeper understanding and greater awareness, active participation and modern technology for Journalists. The business between technology, journalism and business have become way too big.” The survival of the media will depend on how to bring back the issue of “trust and accountability”.

Huib Modderkolk, provided a perspective of a Journalist, who had interviewed Snowden in Moscow. In order to make his point of “the importance of encryption in the work of a journalist”, he asked “how important is it to know about the Issues about Snowden, or what Intercept published last week on the Japanese Spy Agency issue, NSA spycase, Russian hacking activities, Dutch intelligence agencies? That would not have been possible without the use of encryption”.

- “Encryption is an important tool to help journalist. I have interview Snowden in Russia. I would not have been able to do it without a technology and this technology is called encryption. It’s a great tool if we want journalist to work freely”.
- “The use of encryption is under threat with some encryption based applications (WhatsApp, Signal, Telegram) being blocked by the countries like in China, Iran, UAE, and others. Different African countries have also blocked the internet. Even liberal countries are seeking to break into encryption protocols. e.g. UK called messaging app WhatsApp to get encryption arguing that its aids terrorists “real people” do not need the feature and that tech companies should do more to help authorities with security threats. Germany and France have expressed similar ideas. Do we realize that this is a very dangerous path. As this is no easy task, as there is no such thing as a little bit of encryption. If we break the protocol it is broken forever. If the British government has the key to de-encryption, so have criminal groups and other governments. Encryption becomes useless and so will the ability to speak freely to sources”.

- “Freedom of speech and freedom to expression are human rights, so should be the freedom to communicate without censorship. This is a dimension under threat. Can we speak freely to sources if we know that the conversation is intercepted or recorded, if the meta data of that conversation is stored.”
- “If there is anything in this digital age that is important, is to protect the tools that give journalist the power to hold the ones in power accountable.”

The panelists then took a deeper dive into the question of trust and accountability.

- “Trust is rewarded and is evolving as a business model. We have built expertise and are banking on trust to let their business and audience to grow. In a way, the more there is confusion out there, the better it is for the media company that can stand against it, the more trustworthy your media channel becomes. But how to build that trust.”
- “Innovation should be encouraged and not stifled”
- local trust is valuable in a community, so we have to help the local community by building trust. Neighborhood sources cannot tell if a school has been inspected. Where you send your children to school. That’s for a big media company to inform.
- US media have lost 80% of their revenues over the last 20 years (60billion to 20 billion). It’s hard to solve that. The resources to do good journalism are different, if we do good journalism, we help to build that trust. They will buy new subscription, they will buy digital subscription and the advertising goes away and that becomes out business model”
- “it’s hard to cope, there is a difference within those who have to do 24h cycles of news. So, it’s a struggle, investigative journalism is expensive. The future should be that traditional media should have the courage to do less but choose more important news”
- “BBC website has been successful and applauded. But this is not the individual commons, this is still funded by the state.
- “we were applauding the GDPR, but we are using a lot of trackers and cookies. And so, this is an interesting issue. How to cope with this. So, this is in the power of big companies. We have to make money from this.”
- why should I give money to BBC, the state is already giving them money. Why should we pay for media, we need it for free.
- So, by doing value based content, we can ask people to pay
- BBC does not charge extra for online content.
- personal responsibility and to have choice for news. Look at Netflix who charges money. There will be a lot of stumbling before we get it right.

Questions we opened to the floor.

- We need “self-regulating or news laws to keep journalists in line.”
- “We do have any more freedom online and online”
- “selling membership is not disadvantages, when catering to a specific community and audience, we use Google and Facebook to build audience.
- Can we have an “Echo chamber free version” of news. (various startup is experimenting new business models)
- “the US law is not to be blamed for the dwindling trust and accountability on the internet and media”
- we need “the ability to protect the sources and the authors”
- “we are witnessing an information war, social media (countries and people) are trying to discredit news, because of anonymous sources. How to trust the story?”
- “And the anonymous source has to trust you. And hope that you will publish in a way.”
- “media organization need to take guard to not lower the threshold to negative comments.”
- “Time to market problem: being quick enough, being first, how to preserve the quality that you have.”
- “Access to customer, as they are not enough journalists. How to ensure journalist with standards are still able to have the necessary knowledge”.
- “I cancelled my subscription because there were moving advertising and I could not read it anymore. New York times gave 60% rebate, but I refused”.
- “it is important to develop “trust in finance and truth in business and not just by being first (to print). So, a calmer approach to new gathering is necessary. The delusion is exactly that. It’s about smart conclusion, building organizations that are committed to expertise. How to recognize what is trending”
- “we are learning lessons with race to immediacy. Google promotes that first incentive to get volume.”
- “The truth comes out later with deeper learning. And we are learning our lessons from that.” “And advertising is decreasing and we are learning.”
- “We are putting more effort about learning about the source, where do they come from, why do they need to be anonymous”
- “Drafting of the code of conduct, question about good practices for fact checkers (i.e. It’s dangerous to introduce government fact checkers, there are some initiative in the Netherlands Universities. We have to do it ourselves, and we have to listen to readers, we want to create communities to factcheck within them.”
- “Fact-checking is interesting. Magazines often have a team of fact checkers, but not newspapers. Fact checking is a new concept. Because of new US president that have to be fact checked every day.”
- “There is a lot of automated news stories now.” “The idea that AI will replace all human thought (this is unusual, but interesting) something is better dealt with by automation but real journalist is not all replaceable. Some (changes) are structured as reinvestment while others are cost cutting. AI is a significant tool for news gathering

is coming from probability computation from huge data sets. How do you gear to process huge amount of information, which is the root of good journalism”.

- “Artificial intelligence can very quickly lead to artificial idiocies. You are over the oceans and the computer turns on the “put on your seat belts” sign, and that is worrying, “Nothing will ever replace the individual human conscience and decision making capacity. Thinking ahead, in a broader community... let me share a rather good quote of John Kennedy's inaugural... where he said at the end “not all this will be achieved in the first hundred days, a thousand days or even in the lifetime of this administration but let us begin”. This is a good quote with the amount of massive stuff we have ahead of us now”
- “we are in the beginning of it in many ways day, the landscape is changing every day, new technology, new platforms, new business models, new consumers, new audiences, people at the receiving end, also play a critical role of how news, and the internet are function and how they want to consume it. there are challenges ahead”
- “the internet is not going to escape the challenge of accountability, like the traditional media. But it took them a long time. They thought let's go online. And that still doesn't work. Because there is a plethora of them today. So, it's an interesting discussion to have both in terms of the future of the media itself, and the question of accountability and how the media can play a new role in terms of ensuring that there is accountability on the internet”

Rapporteurs: Rajinder Jhol, Geneva / Joe Hironaka, UNESCO