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**Can International Organizations be Controlled? Accountability and Responsibility**

\*236 ACCOUNTABILITY OF INTERNATIONAL ORGANIZATIONS

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### INTRODUCTION

We are presently dealing with an issue, the accountability of international organizations, that requires clarification despite frequent references to it in current discussions. In particular, its meaning and how it overlaps with, and yet is distinct from, the responsibility of international organizations need explanation.

To clarify some basic elements: First, we are dealing this item deals with international organizations that are intergovernmental. Accountability here does not cover multi- or transnational companies or nongovernmental organizations (NGOs). Ink has already been spilled on the issue of the accountability of NGOs, an item that undoubtedly merits further consideration, [\[FN1\]](#) but here we are concerned only with international organizations. This does not necessarily exclude treaty organs, although they are not always deemed to be international organizations strictly speaking, but for the present discussion they are of less importance.

Secondly, the term "responsibility," which is often juxtaposed with "accountability," does not seem to need further clarification. It is well-defined as referring to the legal consequences of noncompliance with an international obligation by conduct that is attributable to the organization. [\[FN2\]](#)

In contrast, the term "accountability" is far from clear. This is a legal expression of neither the common law nor any other legal system; it cannot be translated into several languages--French, German, Spanish, or Russian--because these languages do not provide an equivalent expression. The absence of equivalent expressions is the best proof of the absence of an established meaning of accountability as a term of law. Since the term escapes clear definition, the approach to definition suggested by Wittgenstein has to be applied; his view is that "the meaning of a word is its use in the language." [\[FN3\]](#)

This latter approach seems to be adopted by international law doctrine, which increasingly uses accountability without a clear definition in a variety of contexts, including the context of nonstate actors. NGOs and transnational corporations are called \*237 upon to be accountable for their activities in the field of human rights; individuals are held accountable under international law for breaches of humanitarian law, war crimes, and crimes against humanity. [\[FN4\]](#) The International Criminal Court is sometimes considered an appropriate device to ensure such accountability.

In light of these usages, accountability seems to reflect primarily the need to attribute certain activities under international law to such actors as a precondition for imposing on them responsibility under international law.

Although this understanding is undoubtedly too narrow, one can quite safely conclude that accountability reaches into the field of international responsibility for wrongful acts, including that of international organizations.

## RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS

The issue of international responsibility of international organizations is presently dealt with by the International Law Commission (ILC), the main codification body of the United Nations, under Special Rapporteur Giorgio Gaja. That the ILC inscribed the issue of responsibility of international organizations on its agenda was prompted by two developments.

On the one hand, the ILC scrutinizes at regular intervals the full range of international law in order to identify matters that would be appropriate for codification, or at least discussion. When the ILC started selecting possible topics during its session in 1998, [\[FN5\]](#) it was in the final phase of elaborating draft articles on the international responsibility of states for wrongful acts. [\[FN6\]](#) This success after forty years of work encouraged the ILC to extend its discussion of responsibility to international organizations.

On the other hand, the ILC had earlier dealt with international organizations; its work resulted in the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character, adopted in 1975. [\[FN7\]](#) Another convention relating to international organizations growing out of the ILC's work was the 1986 Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations of 1986. [\[FN8\]](#) The ILC had also discussed other issues within the general topic of relations between states and international organizations (IOs); one was the status, privileges, and immunities of IOs, but the ILC decided in 1992 not to pursue consideration of it. Still, it seems that the existence of IOs and their growing importance in international relations require a closer look at their legal status or at least at legal questions connected with them. This may be why the ILC has now embarked on the issue of the responsibility of international organizations.

Despite the relative clarity of the legal regime of responsibility, the issue undeniably still raises a number of problems if applied to IOs because IOs themselves are already a complex legal phenomenon that is difficult to grasp. For instance, difficulties arise over attributability: it is hard to distinguish between the responsibility to be assumed \*238 by IO member states and that to be assumed by the organization itself. Nevertheless, unlike "accountability," the legal regime of "responsibility" does not contain elements that have only recently appeared in international law and that lack established definitions.

A first outline on this issue was drawn up by Alain Pellet. [\[FN9\]](#) Although it was modeled on the structure of the articles on state responsibility, it nevertheless identified matters that raised more problems than state responsibility, such as not just attributability but also the limited powers of the organization, exclusion of IO internal rules, the combination of responsibilities of the organization and the member states, exhaustion of local remedies, and dispute settlement.

The ILC considered that this issue met the requirements for possible topics for it to deal with as laid down in 1997, [\[FN10\]](#) i.e., that a topic reflect the need of states for progressive development and codification of international law, was sufficiently advanced in state practice to permit progressive development and codification, and was concrete and feasible for eventual codification. In light of these criteria and on the basis of the first outline, the ILC decided in 2000 to place this issue among four others on its agenda for future work, [\[FN11\]](#) appointing Giorgio Gaja as special rapporteur. [\[FN12\]](#)

An ILC working group conducted the first discussions on this issue in 2002. [\[FN13\]](#) Its report deals with the following issues: As to the scope of the topic, the report clarified that the concept would not go beyond the scope of state responsibility; it would deal only with secondary norms and would not cover norms that if breached would give rise to responsibility, i. e., the primary norms. Further, this item was to be separated from that of liability strictly speaking, even though the 1972 Convention on International Liability for Damage Caused by Space Objects was sometimes used as an example of regulation of the responsibility of organizations by convention. [\[FN14\]](#) In this re-

gard, too, the report followed the articles on state responsibility, which did not address the issue of "international liability for injurious consequences arising out of acts not prohibited by international law."

It was also noted that IOs could become responsible to both member and nonmember states; this would become significant in the case of an organization with limited membership. Although in the case of universal membership the specific rules of the organization would become relevant and have priority, responsibility toward member states was not excluded insofar as general rules would become supplement the rules of the organization.

According to the report, the ILC would concentrate on intergovernmental IOs only and would not address NGOs. Only if organizations enjoyed legal personality under international law could they be expected to assume responsibility, since otherwise the states members would become responsible.

As to the method of work, it was clarified that the method used for drawing up the Vienna Convention on the Law of Treaties Between States and International \*239 Organizations or Between International Organizations, which generally replicated the 1969 Vienna Convention on the Law of Treaties, could not be applied, owing to the great differences between states and IOs in this regard.

Problems were expected. With regard to attributability, for instance, problems could arise particularly in cases where state organs were seconded to organizations. Another likely problem was whether states may be held responsible for the activities of IOs of which they are members; issues such as joint and several responsibility could not be excluded. Attributability was considered likely to be the most contentious issue; in view of the different structures and functions of IOs, there might be different solutions.

Since the problems of content and implementation of international responsibility were expected to raise the most complex issues, it was deemed appropriate to leave them aside for the moment.

These first steps undertaken by the ILC already reveal that the topic will necessarily deal with fundamental questions relating to the overall legal status of organizations.

#### ACCOUNTABILITY

Accountability is undoubtedly closely related in meaning to responsibility. This close relationship raises the questions of whether the separate term accountability is needed or whether it would be enough to speak only of the responsibility of IOs. However, in the reports drawn up by the ILA Committee, [\[FN15\]](#) the differences between responsibility as understood by the ILC and accountability become obvious.

First, the term responsibility in the framework of accountability is given a broader meaning than that used by the ILC. It includes all kinds of responsibility to be assumed by IOs, not only that towards states (members or not), which seems to be the main focus of the ILC work. It includes, too, responsibility towards an IO's staff as well as individual persons, irrespective of the legal order governing the responsibility. [\[FN16\]](#)

In addition to this legal understanding, the broader meaning embraces a more extensive political understanding of responsibility. The report states that "that accountability is linked to the authority and power of an IO .... Power entails accountability, that is the duty to account for the exercise of power." [\[FN17\]](#)

Accountability even goes beyond the different meanings of responsibility to extend to substantive rules. What can be derived from the elaboration of certain principles in the reports to the ILA [\[FN18\]](#) is that accountability in this sense also includes primary norms regulating the policy of IOs that could be identified as good governance norms. Sometimes, accountability is considered part of good governance, sometimes the reverse is true; in any case, there is a close relationship between the two, so that accountability could not be discussed without reference to good governance. The latter is said to include transparency in both the decision-making process and the implementation of

institutional and operational decisions; [\[FN19\]](#) a large degree of participation in the \*240 decision-making process; transparency in the form of access to information open to all who are or may be concerned or affected by the decisions; the smooth functioning of the international civil service; sound financial management; and effective reporting and evaluation mechanisms.

The need for such principles results from the increase in the power and significance of IOs in today's international relations, where competences are increasingly shifted from states to IOs. [\[FN20\]](#) These principles obviously should define and eventually limit the ways these organizations exercise the powers they obtain from states. The principles should also function to overcome the deficit of democracy in IOs. They comprise a set of norms that govern activities of organizations in a general way, irrespective of their specific purposes.

Traditionally, the primary norms of IOs were mainly governed by the law of treaties, since they were created by documents that were at the same time their constitutions and multilateral treaties. However, the law of treaties was predominantly based on the concept of bilateral treaties, which meant that reliance on the Vienna Convention encounters difficulties [\[FN21\]](#) when dealing with the multilateral treaties that are a recent form of international actions. [\[FN22\]](#)

IOs as an organized form of activity based on multilateral treaties raise even more problems. Already the constituent instruments or, more generally, the treaty law of IOs can no longer be seen as the sole legal basis of their activities. In order to find legal solutions to the questions raised by their existence and activities, recourse must be made to customary international law or general principles of law. Still, the need to resort to outside norms does not necessarily deny IOs the power to establish new rules for their members as far as they are authorized to do so by their statutes.

Thus, treaty law is able neither to govern all fields of IO activity nor to resolve the legal problems raised by their existence and activities. These deficiencies increase with the growing significance of IOs for international relations.

The more competences and powers are transferred from states to IOs, the more new legal solutions are needed; solutions apparently are to be located in principles of accountability that go beyond the traditional understanding of the law of international organizations as consisting mainly of treaty law. It is still too early to consider whether this field of international law meets those requirements that are conditions for any codification of international law as envisaged by the ILC, but the ILC would be well advised to monitor further developments so as not to miss the appropriate moment for codification.

On the whole, the legal regime labeled as the accountability of international organizations is a distinct and complex chapter of international law. It is a legal response to the growing actual or potential impact of IOs on international relations, which consists of norms of different origin and forms the normative body of the law of organizations. It is aimed at striking a balance between the power of states and of international organizations.

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[\[FN1\]](#). See e.g., *Minding Our Business: The Role of Corporate Accountability in Sustainable Development*. An NGO report to the UN Commission on Sustainable Development (last modified Mar. 28, 1997) is available at <<http://www.corporate-accountability.org/docs/tobistat.htm>>.

[\[FN2\]](#). See the commentary on Article 1 reproduced in JAMES CRAWFORD, *THE INTERNATIONAL LAW COMMISSION'S ARTICLES ON STATE RESPONSIBILITY: INTRODUCTION, TEXT AND COMMENTARIES* 77-80 (2002).

[FN3]. LUDWIG WITTGENSTEIN, PHILOSOPHICAL INVESTIGATIONS, para. 43 (G.E.M. Anscombe trans., 1953).

[FN4]. Steven R. Ratner, Democracy and Accountability: The Criss-Crossing Paths of Two Emerging Norms; DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW (Gregory H. Fox & Brad R. Roth eds., 2000).

[FN5]. See Report of the International Law Commission on the Work of Its Fiftieth Session, UN GAOR, 53rd Sess., Suppl. No. 10, at 218, UN Doc. A/53/10 (1998), available at <<http://www.un.org/law/ilc/reports/1998/98repfra.htm>>.

[FN6]. See id.

[FN7]. See UNITED NATIONS, THE WORK OF THE INTERNATIONAL LAW COMMISSION 69- 70 (5th ed. 1996). For the text of the Convention, see id. at 392.

[FN8]. See id. at 92-98. For the text of the Convention, see id. at 464.

[FN9]. See Report of the International Law Commission, UN GAOR, 55th Sess., Suppl. No. 10, at 299, UN Doc. A/55/10 (2000), available at <<http://www.un.org/law/ilc/reportfra.htm>>.

[FN10]. See Report of the International Law Commission on the work of its Forty-Ninth Session, UN GAOR, 52nd Sess., Suppl. No. 10, at 154, UN Doc. A/52/10 (1997), available at <<http://www.un.org/law/ilc/reportfra.htm>>.

[FN11]. See 2000 Report of the International Law Commission, supra note 9, at 290.

[FN12]. International Law Commission, Report on the Work of its Fifty-Fourth Session, UN GAOR, 55th Sess., Suppl. No. 10, at 228, UN Doc. A/57/10 (2002), available at <<http://www.un.org/law/ilc/reportfra.htm>>.

[FN13]. Id.

[FN14]. Convention on International Liability for Damage Caused by Space Objects, opened for signature [Mar. 29, 1972, 24 UST 2389](#), 961 UNTS 187.

[FN15]. The First Report was presented to the 68th Conference of the ILA at Taipei, see The International Law Association, Report of 68th Conference, Taipei 1998, 584; the second was submitted to the 70th Conference in New Delhi; see, The International Law Association, Report of 70th Conference, New Delhi 2002, at 772.

[FN16]. See Report of 70th Conference, supra note 15, at 786.

[FN17]. Id. at 773.

[FN18]. In this respect the following principles are listed as belonging to the full scope of accountability: (1) good faith; (2) constitutionality; (3) institutional balance; (4) supervision and control; (5) stating the reasons for decisions or a particular course of action; (6) proportionality; (7) procedural regularity; (8) objectivity and impartiality; (9) due diligence; and (10) promoting justice. See id. at 774.

[FN19]. Id. at 774.

[FN20]. August Reinisch, Securing the Accountability of International Organizations, in 7 GLOBAL GOVERNANCE A REVIEW OF MULTILATERALISM AND INTERNATIONAL ORGANIZATIONS 131, 131 (2001).

[FN21]. These difficulties generated the new discussion of the legal regime of reservations in the ILC.

[\[FN22\]](#). The first genuinely multilateral convention was the Declaration of Paris of 1815, Krystyna Marek, Contribution à l'Etude de l'Histoire du Traité Multilatéral, in FESTSCHRIFT FÜR RUDOLF BINDESCHEDLER 17, 17-18 (Emanuel Diez et al. eds., 1980).

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