

## THE LEGAL POSITION OF ACCOUNTABILITY IN THE INTERNATIONAL LAW SYSTEM

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**Abstract.** *This article explores the concept of accountability in international organizations, focusing on how control by members and access to information are critical indicators of accountability. It highlights the mechanisms through which member states or shareholders can exert influence over decision-making processes, especially in intergovernmental and non-governmental organizations. The article delves into the roles of governing and executive bodies in these organizations, examining the importance of equitable representation and transparency. It also addresses how access to information influences organizational accountability, emphasizing that without proper disclosure, stakeholders cannot effectively hold organizations accountable. Additional indicators, such as the process of appointing senior officials, decision enforcement, evaluation procedures, consultation with external stakeholders, complaint mechanisms, and social responsibility, are briefly discussed.*

**Keywords:** *Accountability, International Organizations, Governance Control, Transparency, Legal Framework.*

## ПРАВОВОЕ ПОЛОЖЕНИЕ ПОДОТЧЕТНОСТИ В СИСТЕМЕ МЕЖДУНАРОДНОГО ПРАВА

**Аннотация.** *В этой статье рассматривается концепция подотчетности в международных организациях, с упором на то, как контроль со стороны членов и доступ к информации являются критическими показателями подотчетности. В ней освещаются механизмы, посредством которых государства-члены или акционеры могут оказывать влияние на процессы принятия решений, особенно в межправительственных и неправительственных организациях. В статье рассматриваются роли руководящих и исполнительных органов в этих организациях, изучается важность справедливого представительства и прозрачности. В ней также рассматривается, как доступ к информации влияет на организационную подотчетность, подчеркивая, что без надлежащего раскрытия заинтересованные стороны не могут эффективно привлекать организации к ответственности. Кратко обсуждаются дополнительные показатели, такие как процесс назначения старших должностных лиц, обеспечение исполнения решений, процедуры оценки, консультации с внешними заинтересованными сторонами, механизмы подачи жалоб и социальная ответственность.*

**Ключевые слова:** *подотчетность, международные организации, контроль управления, прозрачность, правовые рамки.*

## Introduction

With the process of globalization, the actions and decisions of governments, international governmental and non-governmental organizations, multinational companies, and even individuals have broader international impacts and affect more people and society. Gradually, more and more areas are coming under the coverage of international law, and this legal system is having a wider impact on the lives and destinies of individuals and entities. Justice demands that all individuals who are affected by international decisions and actions taken within any framework of international law be able to question those decisions and actions and receive an effective response.

Achieving justice in this context requires strengthening and expanding mechanisms for accountability in the realm of international law. In fact, the expansion and reinforcement of accountability is the flip side of the coin to the development and promotion of international law.

This is because international rules, in the absence of appropriate accountability mechanisms, turn into recommendations that lack enforcement and effectiveness. Additionally, accountability not only ensures greater efficiency and effectiveness of international law but also leads to an increase in its acceptance and legitimacy. Without accountability, the rule of law collapses, and the concepts of participation and transparency are severely undermined.

Given the fundamental importance of accountability in achieving good governance, this section of the dissertation is dedicated to the component of accountability. Since accountability is a complex process and different interpretations of it are offered in various academic fields, the first Issue of this section, titled "The Theoretical Foundation of Accountability," will clarify the conceptual and substantive aspects of accountability, as well as its other theoretical dimensions, from the perspective of international law. The second Issue will examine and study the issues and topics related to the accountability of each subject of international law separately.

### *The Theoretical Foundation of Accountability*

In this issue, after exploring the concept and content of accountability in the first section, the subsequent sections will investigate the forms, mechanisms, and social foundations of accountability. The aim is to review traditional and modern approaches to accountability, along with their typical audiences, and to clarify and explain the principles of accountability.

Additionally, this issue will offer models and criteria for assessing accountability. The final section of this issue will address the important relationship between responsibility and accountability, focusing on the structure of the international responsibility system.

### *Section One: The Concept and Content of Accountability*

Despite the frequent use of the term "accountability," its meaning remains ambiguous, and opinions and interpretations of it vary widely. Some of the differences in approaching the concept of accountability stem from the diversity of academic fields that deal with the issue, such as philosophy, public administration, political science, international relations, and public international law. Therefore, to clarify the meaning of this term in the realm of international law, this section will explain the concept and content of accountability.

### *Subsection One: The Concept of Accountability*

Accountability is the process of identifying and understanding needs, receiving and filtering requests, responding to demands, and implementing decisions within the framework of approved duties and programs.

This process is accompanied by accepting oversight, supervision, and systematic efforts to ensure the proper execution of these steps. Accountability involves explaining the reasons behind actions taken or not taken, decisions, and procedures.<sup>i</sup>

Accountability also entails explaining the use of resources, the outcomes they produce, and the responsibility for the consequences of actions.<sup>ii</sup>

In this process, a person or group is required to answer to others about how they have fulfilled their responsibilities. By definition, accountability means that an individual or group, entrusted with a specific task, is expected to provide an explanation of the positive or negative results of their work.<sup>iii</sup> In other words, accountability is the act of holding specific individuals responsible for completing tasks on time, according to agreed-upon methods and standards, and ensuring their proper execution. Another definition of accountability is providing reasons and seeking explanations for actions taken. This definition presupposes a framework in which an individual, group, or organization has specific rights, and based on those rights, they can question someone else and demand explanations for their actions.<sup>iv</sup>

#### Subsection Two: The Content of Accountability

At the core of the concept of accountability lies the process of answering to certain authorities regarding one's actions. Such accountability has several characteristics: it is external, involves exchange and social interaction, and is often directed toward higher authorities to receive responses from accountable individuals. This also implies the superior authority's right to draw conclusions from those responses and potentially impose sanctions as a result.<sup>v</sup> This meaning of accountability aligns with the broader definition provided by Alcock and Grant, who state that accountability involves explaining one's performance to others, evaluating and judging that performance against established standards, and possibly adjusting outcomes if those standards are not met.

#### Subsection Three: The Concept of Accountability from the Perspective of International Law Scholars

Although international law scholars increasingly use the term "accountability," it still lacks a clear legal definition.<sup>vi</sup>

However, two broad lines of interpretation can be distinguished in such writings. The first sees accountability as merely explaining the reason for something,<sup>vii</sup> while the second interprets accountability as holding someone responsible.

The first definition treats accountability as the dissemination of information and justification of behavior, and nothing more. However, the second definition is stricter, as it not only includes the concepts from the first but also requires that actors face potential consequences.

The concept of "holding accountable" not only obligates actors to provide information and justify their behavior but also necessitates a social relationship between the actor and what can loosely be called the "court of accountability." Additionally, it may require the creation of mechanisms through which accountability can be effectively provided.<sup>viii</sup>

In this dissertation, we adopt the second meaning of accountability, which refers to the process in which an actor explains their behavior and provides information to others about it.

In this context, judgment or evaluation of that behavior is based on pre-established principles and standards, and there is a possibility of imposing certain forms of official or unofficial sanctions on the relevant actor.<sup>ix</sup>

#### Subsection Four: The Concept of International Legal Accountability

International legal accountability involves the legal justification of an international actor's actions before others, the evaluation and judgment of those actions based on international legal standards, and the possibility of imposing consequences if the actor's behavior does not conform to those legal standards.

#### Section Two - Forms of Accountability

The most important forms of accountability that prevail in various fields of international law can be briefly outlined as follows:

1. Hierarchical Accountability in an administrative body like the Secretariat of the United Nations.
2. Direct Delegated Accountability, such as that which harmful governments, the World Bank, and the International Monetary Fund impose on the executive boards of these institutions.
3. Financial Accountability, for example, through the Advisory Committee on Administrative and Budgetary Questions of the United Nations General Assembly.
4. Legal Accountability, where one party is not directly involved, but an impartial body (such as the International Criminal Court) with decision-making power exists.
5. Market Accountability, where decisions are left to market forces, such as the pressure on developing countries to adopt the standards of global capitalist markets.
6. Peer Accountability, like diplomats' desire to maintain their credibility and influence among their peers.
7. Reputational Accountability, which applies to all previous categories but also has a "soft power" in relation to the prestige and reputation of the relevant government.<sup>x</sup>

#### Section Three - Accountability Mechanisms

Another aspect of accountability that allows us to go beyond the theory of responsibility for wrongs is the existence of accountability mechanisms. Accountability mechanisms refer to the various processes employed to achieve accountability in different fields.

#### Subsection One - Legal Mechanisms

International legal scholars traditionally focus more on legal accountability. The characteristics of legal accountability or accountability through the rule of law include, first, that an actor is accountable for actions that are in conflict with international obligations, and second, that the process of justification and any potential consequences are managed by a legal system.<sup>xi</sup>

One example of this is judicial review, which has been particularly developed in the European Union, where the European Court of Justice can fill accountability gaps. Another example is legal accountability in international law, encompassing the principles of state responsibility and state liability.

#### Subsection Two - Political Mechanisms

Political accountability refers to the accountability of those in political power (the executive branch) through political processes. A prominent example of this is democratic accountability.

Political accountability of the executive branch involves obligating the government to provide a response (with explanation) to an elected assembly regarding an action the government or its agencies have taken in the past or have planned for the future. Additionally, political accountability refers to the fact that the parliament can hold the executive branch accountable for actions it has undertaken in the past.<sup>xii</sup>

Political accountability does not necessarily have to be limited to democratic accountability. In fact, democratic accountability is not necessarily suitable for implementation at the international level, where no directly elected parliament exists, with the exception of the European Parliament, and national assemblies generally have little control over their governments' actions at the international level. The concept of political accountability also includes processes where governments are accountable to international organizations, including non-compliance procedures.<sup>xiii</sup> However, the fact that such mechanisms do not involve the determination of responsibility or liability does not mean that they are not governed by or of interest to international law.

Furthermore, although the form and nature of political accountability differ fundamentally from legal accountability, it can still help achieve goals similar to those of legal accountability.

Upholding the rule of law is a crucial element of democratic accountability. An example of this is parliamentary oversight of the executive branch.<sup>xiv</sup>

The question of whether the executive branch has acted contrary to international obligations is a key issue in legal accountability but generally holds little importance in political accountability. A fundamental question that has so far received little attention is which forms of political accountability can compensate for the absence of existing legal accountability mechanisms and vice versa.

#### **Subsection Three - Administrative Accountability**

Another mechanism of accountability is administrative accountability. This mechanism refers to processes of an administrative nature, such as the resignation of government officials or disciplinary measures. One example is the resignation of Benon Sevan, the director of the United Nations Oil-for-Food Program. He resigned following the publication of independent reports indicating corruption in the program. This concept of accountability was also used in the Hayat Report on the management of justice within the United Nations system. The report states that an effective and comprehensive system of accountability requires managers to have both the authority and responsibility for their decisions and to be accountable for those decisions within the management structure and justice system.<sup>xv</sup> Administrative accountability, like political accountability, may relate to claims of violations of international law but does not necessarily have to.

#### **Subsection Four - Other Accountability Mechanisms**

We do not claim that the three models of accountability (legal, political, and administrative) cover the full spectrum of potential accountability mechanisms. Accountability mechanisms may also include financial, organizational, and reputational mechanisms.<sup>xvi</sup>

The usefulness of such distinctions depends on the actor in question. In fact, the exercise of power by private entities cannot easily be subjected to the recognized forms of legal, political, and administrative accountability.<sup>xvii</sup>

This requires providing new frameworks for understanding and new normative perspectives to identify the principles and processes more suited to these forms of governance.

Efforts to develop principles and procedures of an administrative legal nature may fill part of the puzzle both at the national and international levels. However, it also depends to a great extent on looking beyond public law models and recognizing the accountability that may occur through private sector processes.

#### Section Four - Levels of Accountability

Many of the current problems and shortcomings in accountability stem from the fact that governance operates at multiple levels (subnational, national, regional, international, Global).

Therefore, an important question is whether accountability mechanisms at one level can, and if so how, complement or address the shortcomings of accountability at other levels, or even operate across multiple levels. One aspect of this question is whether holding the member states of an international organization accountable can address some of the challenges related to holding the organization itself accountable. Another question related to the accountability of various levels of governance is whether domestic mechanisms, such as parliamentary processes, can compensate for the shortcomings of international accountability mechanisms.

The weaknesses in accountability, arising from the multiplicity and fragmentation of power in the international arena, which increases the risk of abuse, require a combination of various forms of accountability for different actors, accountable to multiple constituencies. Thus, multi-level accountability (national, regional, international) is an essential mechanism for achieving accountability in international law. Many accountability processes, including government accountability, are multi-layered in nature and are shared among actors at different levels (national, regional, international) as well as between private and public entities. For example, domestic courts and parliaments may address gaps in accountability at the international level. However, the fragmentation and disconnection of accountability mechanisms,<sup>xviii</sup> especially when actors such as domestic courts and national parliaments operate according to different logics and pursue different objectives that may not necessarily align with considerations related to international governance, could pose risks.

#### Section Five - Democratic Accountability in International Law

In the context of a democratic state, the primary accountability relationships are established between the people and public office holders, and within the hierarchy of public officials, where elected politicians are accountable to the people, and administrative officials are accountable to the elected politicians. Such accountability relationships are abundant at the domestic level but are rare at the international level. In fact, at the international level, where the principle of democracy has been limited in establishing itself in the international legal order and within international organizations, this broader concept of accountability is less familiar.

Traditionally, international legal scholars have focused on well-established legal principles such as the responsibility of states. The implementation of the broader concept of accountability, in the sense that an actor is continuously accountable in an ongoing, interactive, and iterative process, is a relatively new idea. David Held, while supporting the notion of global social democracy, argues that the project of global social democracy as the foundation of the rule of law at the international level consists of democracy, accountability, greater transparency in global

governance, a deeper commitment to social justice in the fairer distribution of life opportunities, support for communities at all levels from local to global, regulation of the global economy through public management of global financial and trade rules, the provision of global public goods, and the involvement of key stakeholders in corporate governance.<sup>xix</sup>

#### Section Six: Accountability Indicators of International Organizations

The control of an organization by its members, along with their access to the organization's information, is a key indicator of the accountability of international organizations. In this section, we focus on two main indicators: member control and access to information, both of which are necessary, though not sufficient, for an organization's accountability. Furthermore, some additional accountability indicators will be briefly discussed.

#### First Clause: Control of the Organization by its Members

##### *a) The Relationship Between Member Control and Organizational Accountability*

Every organization has members, and the control these members exert over the organization's governance plays a decisive role in its accountability. However, the nature of these members varies from one organization to another. In governmental organizations, the members are nation-states, while in multinational corporations, the shareholders are the members. In most organizations, a small minority of members often holds substantial control over the organization.

This is more common in intergovernmental organizations than in non-governmental organizations. For example, in the World Bank, a minority of members institutionally control the organization. Even in the World Trade Organization, which operates on the principle of "one member, one vote," a small minority of members control the organization through informal decision-making processes. International non-governmental organizations, on the whole, have avoided this issue by embedding mechanisms that ensure a small number of members do not seize control. The International Federation of Red Cross and Red Crescent Societies and the International Trade Union Confederation have implemented formulas to ensure geographic representation of members. However, among the international non-governmental organizations, the International Chamber of Commerce has not successfully employed such mechanisms to prevent a few members from gaining control.<sup>xx</sup>

Multinational corporations also suffer from this issue with the rise of institutional investors.

Although these investors represent a large number of shareholders, they can act as a block in the company and make decisions monopolistically, sidelining individual and non-institutional shareholders. These institutional shareholders not only control the majority of votes but also have greater access to the company's information prior to meetings of the company's governing bodies.

##### *b) Assessing the Level of Member Control*

Members tend to exercise their authority over an organization through control of two key decision-making bodies: the governing body and the executive body. The governing body is the highest decision-making organ of the organization and should include all members. This body makes the key decisions that determine the general direction of the organization.

Most governing bodies delegate much of their decision-making power to executive bodies.

The executive body acts on behalf of the governing body. When assessing member control, one should examine whether all members are represented in the governing body and if they have the ability to place issues on the agenda of the governing body's meetings.

For the executive body, it is necessary to evaluate whether members have the ability to appoint, elect, and remove individuals from the executive body to maintain control over it.

It is also important to examine how votes are distributed. Who controls the ability to make changes to the governing rules of the organization, including the legal documents that determine the competencies of the members and the key decision-making bodies? Does a minority of members control the majority of decision-making power?<sup>xxi</sup> If so, given that the decisions affect all members, this creates accountability issues.

Another issue arises when an organization has a limited number of members, but its decisions affect a wide range of stakeholders. Of course, the mere fact that the number of members is limited is not necessarily a negative aspect.

*c) Criteria for Optimal Member Control of the Organization*

To assess whether members have optimal control over the organization, the following questions can be examined:

- Are all members represented in the governing bodies of the organization?
- Do all members have the ability to place new issues on the agenda of the organization's governing bodies?
- Do all members have the ability to nominate, elect, and remove individuals from the organization's executive bodies?
- Does the executive body fairly represent all members?
- Are changes to the governing rules of the organization subject to the approval of at least two-thirds of the members?
- Does the majority of members (70% or more) hold the majority of votes?

*Second Clause: Access to Information*

*a) The Relationship Between Access to Information and Accountability*

Another key indicator of accountability is organizational transparency. Access to information is a crucial aspect of organizational accountability because without timely and relevant information about what the organization is doing, neither internal nor external stakeholders can hold the organization accountable. For an organization to be accountable for its activities, its stakeholders must be able to identify who is responsible for specific actions.

However, in practice, most groups within various organizations have limited access to information related to decision-making processes. Non-governmental organizations, in particular, often do not provide information that is important for their stakeholders, such as how they spend their resources and how successful they are in achieving their goals. Furthermore, the evaluations these organizations provide of their projects and programs are often inconsistent.

On the other hand, the information that organizations publish about their decision-making processes is usually very limited. Only a few organizations publish the agendas and minutes of their executive and governing bodies. Although confidentiality is important, a great deal of information could still be made available to stakeholders.

*b) Criteria for Optimal Access to Information*

The following questions provide a set of criteria for assessing the level of access to information for members:

- Is a description of the organization's goals, objectives, and activities available?



- Are evaluations of the organization's main activities accessible?
- Is there an official record of each member's votes?
- Are the agendas and minutes of the executive and governing bodies of the organization publicly available?
- Is there a clear guideline for the publication of information, specifying which types of organizational documents will be made public and which will not, along with reasons for non-disclosure?
- Is an annual report available to the public, and does it include financial information from external audits?

#### Third Clause: Other Indicators of International Organizations' Accountability

##### *a) Appointment of Senior Officials*

How are senior officials appointed, replaced, or retained within the organization?

##### *b) Enforcement Mechanisms*

This aspect only pertains to intergovernmental organizations and refers to the organization's ability to enforce its decisions on member states.

##### *c) Evaluation Processes*

Which aspects of the organization's work are evaluated, how are these evaluations conducted, and how are the results reported to the public?

##### *d) Consultation with External Stakeholders*

How does the organization involve stakeholders outside the organization in its decision-making processes?

##### *e) Complaint Mechanisms*

How does the organization allow those most affected by its decisions to file complaints, and what mechanisms are in place to address these complaints?

##### *f) Social Accountability*

How does the organization manage and evaluate the environmental and social impacts of its activities, and how does it report on them?

#### Conclusion

Accountability is a cornerstone of good governance in international organizations, and its proper implementation depends largely on two primary factors: control by members and access to information. The presence of both factors is crucial, though not sufficient on their own to guarantee full accountability.

The article emphasizes that ensuring equitable member participation in decision-making bodies and granting timely access to relevant information are essential steps in promoting transparency. Additionally, the incorporation of other mechanisms, such as robust evaluation processes, fair appointment practices, and effective channels for complaints, further strengthens organizational accountability.

Ultimately, a transparent and participatory framework allows international organizations to better respond to the needs and concerns of their stakeholders, fostering trust and legitimacy in the global governance system.

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