Chapter 3

Accountability

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A week into the anti-racism protests that followed the chilling murder of George Floyd by a Minnesota police officer, the co-founder of Black Lives Matter (BLM), Patrisse Cullors, appeared on ABC's *Nightline*. The show recapped the extraordinary events of that day: US President Donald Trump had announced that he was "dispatching thousands and thousands of heavily armed soldiers, military personnel, and law enforcement officers" to quell the demonstrations. Federal police and military troops had used tear gas, rubber bullets and flash grenades on peaceful protestors gathered around the White House to clear the route to a cynical photo-op: the President posing before a church that he did not enter, holding aloft a Bible that he did not open.

Asked to react, Cullors made several points. She noted the President's record of branding local protestors and BLM activists as "terrorists", urging the show's host to recognise that the issue at hand was, indeed, terror, but inflicted by the state on black bodies – police terror. The protestors were seeking an end to this terror. They wanted the arrest of all the officers involved, and more: "Everybody wants to be apologized to. Everybody wants to be told, "I'm sorry. What I did was wrong. It was unacceptable. We won't do it again and, in fact, this is how we change."" But they were unlikely to get any of that: "We barely get a sorry, we rarely get accountability and we never get change." Black experience of police violence was not new. The foundation of policing, Cullors noted, lay in slave patrolling. Under Trump, law enforcement had been encouraged to become more brutal, "to hurt people".

The movement thus wanted more than words. "We need to defund police and we need to take those resources and put them back into our communities so that we have access to healthy food, we have access to adequate health care, we have access to adequate public health system." The demonstrations were to mourn black deaths, but also "for black life".

The ABC headline summed up for Cullors: "Black Lives Matter co-founder says what protesters want is simple: Accountability".[1]

II. Language, Concept, Contexts

On one view, "accountability" seems an unlikely vessel for the expectations outlined by Cullors. In its central dictionary meaning, the word denotes a liability to account for, or answer for, one's conduct. Cullors did use it in that sense when speaking of the arrest of Floyd's killers. But what about protestors' other demands, including with respect to future public spending? Those go beyond seeking legal liability, or apology, for specific past acts. They are demands for structural change, founded on a historically and politico-economically informed analysis of the conditions that enable deadly encounters between the police and the black public. They are an effort to alter the character of future engagements; in Cullors's words, they are for black life. That "accountability" was chosen to sum up all of this tells us

[1] A. Riegle and A. Yang, 'Black Lives Matter Co-Founder Says What Protesters Want Is Simple: Accountability', *ABC News*, June 2, 2020, https://abcnews.go.com/US/black-lives-matter-founder-protesters-simple-accountability/story?id=71008710 (all URLs current as of 23 April 2021).

something about the term itself: the capaciousness of its associations, and its normative heft within popular discourse.

In the *Oxford Handbook on Public Accountability*, Melvin Dubnick describes accountability as a prominent cultural keyword: a word which, in its changing uses, bears "witness to a general change in our characteristic ways of thinking about our common life" including "our social, political and economic institutions".[2] The meanings we squeeze into the term can tell us something about how, in whose interests, to which demands, and to what standards of evaluation we expect our public institutions to function. We might thus expect that accountability would be a highly contested term. Yet, that does not appear to be the case. In fact, the "push for greater accountability seems to be a point of agreement in even the most partisan and divided political contexts".[3] "Accountability" is simultaneously a revealing word when placed under critical scrutiny, and obscuring in its more general uses, where it can serve to paper over differences in positions and expectations.

International organizations have been active in disseminating the term, especially since the late 1990s. The language of accountability has also been applied, with increasing vigour, to international organizations themselves. As Ruth Grant and Robert Keohane noted in an influential essay of 2005, concerns about abuses of power have operated more strongly on the international plane, because there even "the minimal types of constraints found in domestic governments are absent".[4] Critics of globalization have been especially concerned with the power of international organizations, regarding institutions like the World Bank and the World Trade Organization as relatively unconstrained – "unaccountable" – compared to democratically accountable states. Grant and Keohane's suggestion, against such concerns, that international organizations *are* accountable, albeit in different ways from states, was an early marker of a now vast body of scholarship in both international law and international relations that focuses upon identifying the checks that operate upon international organizations, and the constituencies towards whom they are or should be accountable.

Of course, as renewed cycles of violence and protest on American streets remind us, accountability may be elusive even within democratic states. Nevertheless, discussions of accountability in the international organization context do present specific difficulties relative to a domestic context. In international organizations, concern for individuals' and communities' rights sits within the broadly statist structures and logics inherent in public international law. This creates a structural tension between states on one hand, and individuals or communities on the other, as persons to whom accountability is owed.

Contestation over accountability of international organizations to individuals and communities may also reinforce inequality between states. The international institutional endowment in which accountability is being crafted is a congealment of historic power relations, in which northern states have played an outsized role in shaping the mandates, leadership and internal procedures of international organizations. When NGOs advocate for enhanced human rights and accountability mechanisms for people in the global south, they are usually leveraging the influence of northern governments to reform or establish international organizations—often in the direction of northern priorities. Thus, the very process of expanding protection and voice in the south can reinscribe the north's hegemonic

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[2] M.J. Dubnick, 'Accountability as a Cultural Keyword', in E. Ferlie, L. Lynn Jr and Ch. Pollitt (eds), *Oxford Handbook of Public Management* (Oxford University Press, 2014) 23.
[3] *Ibid*.
[4] R.W. Grant and R.O. Keohane, 'Accountability and Abuses of Power in World Politics', (2005) 99 *American Political Science Review* 29, 33.

position in the international order. While the protagonists in this pattern may be changing, the dynamic of interstate inequality remains.

A further issue is the relative insulation of international organizations from domestic procedures. International organizations typically enjoy immunity from suit in domestic courts, and from domestic enforcement action. New chinks may be emerging in this immunity, but will likely not transform the general picture.[5] Of course, national laws and domestic executive action implementing international organization decisions *are* open to challenge in domestic courts. But the role of the organization itself may not be susceptible to tort or public law claims, which have been an important element of the accountability of state authorities. This is coupled with a general absence of international courts with jurisdiction over international organizations.

Perhaps most significantly, the import of accountability depends on the underlying norms against which actors are giving an account. The fact that international law obligations, concerning the protection of human rights and the environment, for example, have been crafted for states primarily, has left a certain ambiguity about whether and in what ways international organizations might be subject to their strictures. In general, these norms tend to be partially transposed into internal policies applicable to the work of the staff of international organizations. This has several implications, including that the norms may be piecemeal, with divergences between different organizations, and vis-à-vis norms applicable to states. These internal norms also may be triggered only when the institution does seek to act, neglecting instances in which it simply omits to act, and people are harmed by its inaction. Moreover, where institutions act, they often do so in tandem with states. And here, disentangling not only the norms applicable, but also the roles of different actors – including within structures of organizational decision-making – poses particular difficulties, which laws on state and international organization responsibility have addressed at best imperfectly. Unsurprisingly, with legal accountability posing particular challenges, the more common measures tend to be of investigatory or informal character, and largely supplied by international organizations themselves. Even here, allocation of roles between states and international organizations, and the reach of particular mechanisms, may remain sources of friction.

In this essay we review the institutional mechanisms and bodies of literature that have responded to and shaped discussions of the accountability of international organizations, with a particular focus on the World Bank. The Bank's activity was an iconic trigger for accountability reforms, and the Bank is both a key player within accountability discourse and an energetic narrator of its own institutional vision of accountability. We begin with a brief sketch of the emergence of accountability as a theme in the law of international organizations, zeroing in on the catalysts of the 1980s and 1990s that inspired various organizations to examine their own decision- and policy-making, and drew practitioner and scholarly attention. We sketch the variety of forms and mechanisms that organizations have used, and the spawning and generative impacts of empirically driven legal and political science literatures. Our narrative then contextualises the Bank, and international organizations more broadly, as agentic and reflective actors within a dynamic environment, not so much attaining accountability as engaged in long-running contestation over what it entails and how to translate it into institutional processes. We close with some reflections on the politics of accountability, and directions for future research and thought.

[5] *JAM et al v International Finance Corp*, US Supreme Court, 27 Feb 2019.

III. 28 September 1989, Harsud, India

On a hot afternoon, in a town slated for drowning under the march of the Narmada Valley Dam Project (NVDP), 35000 people raised a now familiar chant: "*vikaas chahiye, vinaash nahi*" – "we want development, not destruction".[6] The Indian state has for six decades taken the view that the NVDP, with its plans for 30 major, 136 medium and 3000 minor dams, and featuring the gigantic (and once World Bank funded) Sardar Sarovar and Indira Sagar dams as its centrepieces, offers development, frequently rehearsing Jawaharlal Nehru's famous aphorism that dams are "the temples of modern India".[7] However, the people and organizations who gathered at Harsud, and after, under the banner of the *Narmada Bachao Andolan* (NBA), were seeing principally the destruction that dams entailed. Sardar Sarovar alone, for instance, has displaced more than 200,000 people and drowned hundreds of villages and thousands of hectares of farm and forest land. Such effects were anticipated: NVDP from the very outset betokened mass displacement and environmental harms.[8] Despite this, in omissions that would become central elements of the NBA's campaigning, the state made few efforts to seek the consent of those displaced or offer much by way of rehabilitation.

The critique voiced at Harsud indicted not only the government, but also the World Bank for financing and promoting destructive models of development. By the Bank's own reckoning, between 1986 and 1993, the years when its NVDP funding was operational, Bank-supported projects displaced 2.5 million people.[9] Already in 1985 the Bank had foreseen several "massive displacement operations", including 100,000 people in the context of the Indira Sagar project and 70,000 in the Sardar Sarovar project.[10] It also had in place internal policies relating to displacement, tribal peoples and environmental impacts. But it failed to follow these policies in case of the NVDP; its India department also omitted to inform senior management fully of resettlement and environmental deficiencies, and to address serious problems even after they had become apparent. These were among the conclusions reached by an independent review commissioned by the Bank itself in 1991, after the NBA had succeeded in having its criticisms amplified by international NGOs and the US Congress.[11]

The Bank's review had few consequences for the NVDP, which continued after the Bank withdrew funding and remains deeply contested today. Nor did it save Harsud from submergence. But it did have more considerable impact upon the Bank itself. The Bank's long-serving general counsel, Ibrahim Shihata, called the Narmada involvement the "single

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[6] M. Patkar, 'Drowned and Out', *The Hindustan Times* (4 August 2004), https://www.countercurrents.org/en-patkar040804.htm. For more on the formation and progress of the NBA, see this oral history collection gathered by N. Oza: https://oralhistorynarmada.in/.

[7] Though Nehru himself had grown concerned about the 'disease of gigantism' afflicting these projects: S. Amrith, *Unruly Waters: How Mountain Rivers and Monsoons Have Shaped South Asia's History* (New York: Basic Books, 2018) 213.

[8] A. Kothari and R. Bhartari, 'Narmada Valley Project - Development or Destruction?', (1984) 19 *Economic and Political Weekly* 907.

[9] World Bank Environment Department, 'Resettlement and Development: The Bankwide Review of Projects Involving Involuntary Resettlement 1986–1993' 7, http://documents1.worldbank.org/curated/en/412531468766148441/pdf/multi-page.pdf.

[10] M.M. Cerna, 'Involuntary Resettlement in Bank-Assisted Projects. A Review of the Application of Bank Policies and Procedures in FY79–85 Projects' 7–8, http://documents1.worldbank.org/curated/en/879711468765928445/pdf/multi0page.pdf.

[11] Vergin, 'Vergin to Preston (World Bank President), Office Memorandum: India: Sardar Sarovar (Narmada) Projects – Morse Review, May 5, World Bank Archives' https://timeline.worldbank.org/themes/timeline/pdfjs/web/viewer.html?file=//timeline.worldbank.org/sites/timeline/files/timeline/archival-pdfs/event65_SardorSarovar_2_1662724.pdf.

most important case to draw public attention to the accountability issue" facing the Bank.[12] In the wake of the NBA campaign and ensuing findings, the Bank established a novel mechanism – the Inspection Panel – with powers to investigate cases in which project-affected people claim to have been harmed by the Bank's violation of its own policies and procedures, including those with respect to social and environmental impacts.

IV. The Embrace of Accountability in the Law of International Organizations

Shihata's framing of the controversies over the NVDP as crystallizing an "accountability issue" mirrors broader trends in the mid-1990s. "Accountability" was already a term of choice within the Bank – part of a suite of governance reforms the Bank was promoting in borrower countries and considered neutral enough not to stray into the "political" terrain prohibited by its founding instrument.[13] As regards global discourse more generally, political scientists do not find evidence of "any coherent social movement or reformist ideology" propelling the acceleration of "accountability" to prominence.[14] Its rise perhaps owed something to contrasting political currents: the collapse of the Soviet bloc and a new democratic and grassroots impetus against autocratic or dictatorial rule on one hand, and the neoliberal turn in Atlantic democracies towards new public management and related managerial practices on the other. These represent quite different visions of holding government to account. However, a comprehensive intellectual history is beyond our scope here; what is important for our purposes is the way that "accountability" has provided a commodious label under which to collect a range of practices and expectations, and the way this "socially embedded, politicized, pluralistic, and value-heavy construction" has taken shape and shaped debates within the law of international organizations.[15]

Accountability language took several different channels into the discourse within and about international organizations. Some organizations had helped disseminate and popularize a notion of accountability applied to governments, particularly in the context of aid recipients' accountability for public finance (accountability as budgetary discipline and anti-corruption), and in the context of international criminal justice and human rights (accountability juxtaposed to impunity). In various respects, however, there were concerns about the extent to which international organizations themselves were answerable – for anything from managerial inefficiencies to errors of judgment to complicity in grave human rights violations. The collapse of the International Tin Council in 1985, and ensuing litigation concerning (inter alia) whether private creditors could recover directly from member states, made clear the consequences of failure for both creditors and the states. This triggered a study in the Institut de Droit International,[16] and a surge of scholarship on the obligations of international organizations and member states vis-à-vis third parties.[17] An escalation of perennial US discontent about the perceived inability of the UN to come to grips with fraud

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[12] I. Shihata, *The World Bank Inspection Panel* (Oxford University Press, 1994) 9.
[13] 'Shihata Transcript' (11 May 1994) 29, https://oralhistory.worldbank.org/transcripts/transcript-oral-history-interview-ibrahim-f-i-shihata-held-may-11-1994; G.F. Sinclair, *To Reform the World: International Organizations and the Making of Modern States* (Oxford University Press, 2017) 255–62.
[14] Dubnick, 'Cultural Keyword', 25.
[15] E. Weisband and A. Ebrahim, 'Introduction: Forging Global Accountabilities', in A. Ebrahim and E. Weisband (eds), *Global Accountabilities: Participation, Pluralism, and Public Ethics* (Cambridge University Press, 2007) 3.
[16] R. Higgins, 'The Legal Consequences for Member States of the Non-Fulfiment by International Organizations of Their Obligations toward Third Parties: Preliminary Exposé and Draft Questionnaire (1989)', (1995) 66 *Annuaire de l'Institut de Droit International* 251.
[17] J. Klabbers, *An Introduction to International Institutional Law*, 3rd edn, (Cambridge University Press, 2015).

and abuse resulted in the creation of a new Office of Internal Oversight Services.[18] As occurred in the World Bank, demands for accountability of governments to citizens were projected back onto the organizations funding and shaping development interventions.[19] There were also criticisms of the UN envoy's, and Secretariat's, failures to convey accurately the developing situation as Rwanda descended into genocide in 1994.

At least some of these diverse incidents may have been part of the impetus for the 1996 creation by the International Law Association (ILA) of a Committee on Accountability of International Organizations, with a mandate to "consider what measures (legal, administrative or otherwise) should be adopted to ensure the accountability of public international organisations to their members and to third parties, and of members and third parties to public international organisations".[20] "Accountability" here encompassed legal forms, but extended to "political, administrative [and] financial" forms as well. The Committee, consulting extensively with counsel to international organizations, developed a set of Recommended Rules and Procedures (RRPs), a framing chosen to avoid any assertions as to the legal status or otherwise of the stipulations.

The Committee's early work offers a glimpse of the fluidity of vocabularies, and range of issues at stake. The Committee drew out three different "levels" of accountability: internal and external scrutiny and monitoring; tortious liability for acts or omissions not involving breach of any international or institutional law; and responsibility for acts or omissions constituting a breach of international or institutional law. By 1998 the first level – scrutiny and monitoring – was translated into a series of "principles" resonant with public law. The most developed of these, framed as the "principle of good governance", encompassed "transparent and democratic decision-making process, access to information, well-functioning of the international civil service, sound financial management".[21] The exact framing would shift a bit over time. In the 2000 report, for example, "democratic decision-making process" was replaced by "participation", then reinstated in subsequent versions in a watered-down way, as "a large degree of democracy in the decision-making process".[22] And there was increasing attention to ex post facto reporting and evaluation, and remedies. But by and large the structure remained the same: the widest sense of "accountability" was infused with a public law sensibility ("Power entails accountability, that is the duty to account for the exercise of power"), and distilled into principles with subsections, the "principle of good governance" serving as a kind of portmanteau.[23]

Across the second and third levels of responsibility – that is, tortious liability; and responsibility for breaches of international or institutional law – the ILA Committee laid out "primary" rules and recommended practices, and then "secondary" rules (essentially treatment of responsibility of international organizations). Some primary rules and recommended practices, such as that international organizations should comply with basic human rights obligations, were potentially expansive on their face, but did not on closer examination depart from the usual approaches inherent in sources doctrine and theories of international organization personality. They were fleshed out particularly in connection with

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[18] D. Thornburgh, 'Today's United Nations in a Changing World', (1993) 9 *American University International Law Review* 215, 222–3; UN General Assembly Resolution 48/218B (1994).
[19] see, e.g., J. Cahn, 'Challenging the New Imperial Authority: The World Bank and the Democratization of Development', (1993) 6 *Harvard Human Rights Journal* 159, 164–5; Shihata, *World Bank Inspection Panel*, 38.
[20] CAIO, 'Part II: Report' (1998) 68 *International Law Association Reports of Conferences* 584, 586.
[21] *Ibid*., 599–602.
[22] CAIO, 'Part II: Accountability of International Organisations', (2004) 71 *International Law Association Reports of Conferences* 164.
[23] CAIO, 1998 Report, 878.

temporary administration of territory, imposition of non-military coercive measures, and peacekeeping and peace enforcement, but remained inchoate in other contexts.

While the ILA Committee's drafting was proceeding, the International Law Commission (ILC) also took up the question of the responsibility of international organizations, delving further into issues such as attribution, and producing, ultimately, the Articles on Responsibility of International Organizations (adopted by the General Assembly in 2011). These Articles, though clearly representing a progressive development of the law, were more squarely within the four corners of law as such, unlike the ILA's focus on political, administrative, and financial forms of accountability. Their coverage was significantly narrower than that of the ILA's RRPs, because responsibility only arose where there had been non-compliance with an international obligation (by definition, most likely in relations between international organizations and states rather than between organizations and third parties), and because the ILC's work did not purport to say anything about the primary rules which might give rise to these obligations.

The ILA's final report in 2004 coincided with a surge in scholarship in the early-mid 2000s, that took accountability as a touchstone and focused attention on particular institutional practices which would realise it. In political science, Grant and Keohane sketched accountability – defined as the right to hold those in authority to a set of standards, judge whether the standards have been met, and impose sanctions if not – as central to democracy, and discussed how accountability might be secured beyond the democratic apparatus of states. Noting the "clear tension between the concept of a World Bank that is accountable to poor people and one that is accountable to the U.S. Secretary of the Treasury", they mapped accountability to these different constituencies, of different "types" (hierarchical, supervisory, fiscal, legal, market, peer, public reputational); and called for more intelligently-designed accountability systems.[24]

In law, scholars were taking a range of conceptual approaches to the theme now often framed as "global governance": how to make legal sense of the institutions and relationships wielding power globally, but not fully legible within a statist public international law paradigm. In one influential intervention, Kingsbury, Krisch and Stewart recast transnational regulatory power as "global administration". International organizations loomed large in this picture, albeit as only one institutional form alongside networks of national regulators and administration by hybrid intergovernmental–private or fully private arrangements. The authors discerned in existing practice an emergent "global administrative law" consisting of "mechanisms, principles, practices, and supporting social understandings that promote or otherwise affect the accountability of global administrative bodies, in particular by ensuring they meet adequate standards of transparency, participation, reasoned decision, and legality, and by providing effective review of the rules and decisions they make".[25] In this re-description the keystone of accountability was both empirically assessable, and imbued with normative significance. Other scholars, particularly those shaped by a continental public law tradition, pursued similar concerns in a vocabulary of "legitimacy" rather than accountability.[26]

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[24] Grant and Keohane, 'Abuses of Power', 33.

[25] B. Kingsbury, N. Krisch and R. Stewart, 'The Emergence of Global Administrative Law', (2005) 68 *Law and Contemporary Problems* 15, 17.

[26] A. von Bogdandy, Ph. Dann and M. Goldmann, 'Developing the Publicness of Public International Law: Towards a Legal Framework for Global Governance Activities', in A. von Bogdandy et al. (eds), *The Exercise of Public Authority by International Institutions: Advancing International Institutional Law* (Heidelberg: Springer, 2010) 3, 20.

These scholarly projects converged in a focus on the concrete reforms then developing across many international organizations, particularly: greater routinisation of transparency and participation in decision-making; formalization of the process and substance of decision-making; and channels for ex post facto review (and sometimes redress) following decisions. These reforms sometimes entailed adjustments to existing decision-making processes within institutions, and sometimes involved the establishment of wholly new processes or entities, such as the World Bank's Inspection Panel, and, in other cases, ombudspersons, inspectors, independent experts or appeals chambers. Such mechanisms responded to diverse concerns: from conduct that was illegal, unlawful or at least not compliant with human rights, to breaches of internal institutional policy, to lawful and internally-compliant but otherwise contestable policy choices. They privileged different "accountees": from hierarchical supervisors, member states and funders, to individuals affected. In some cases, individuals affected were readily identifiable ex ante, as with refugee status determinations, the issuance of Interpol red notices, or the listing of individuals subject to anti-terrorist sanctions. In others, the class of persons affected was hard to delimit in advance, as with policy decisions about priorities for institutional action, or the conduct of humanitarian and peacekeeping missions.

Scholarship in this vein, while not exclusively determining approaches to accountability,[27] has shaped the discussion in international law in three important respects. First, it has both captured and fostered an iterative relationship between scholarship and "practice" writ large (extending beyond what would be relevant for custom-formation). In describing practice, academic commentary enlists into "accountability" examples of institutional transformations in which the actors themselves might not have framed their concerns in those terms. For instance, one of the most-cited examples of a shift towards greater accountability in global governance is the ECJ's rulings in *Kadi I* and *II*,[28] which effectively precluded EU implementation of sanctions imposed by the UN Security Council on individuals on the basis that the process involved had not met EU law protections for fundamental rights. These decisions were focused on EU law and did not themselves so much as mention accountability; yet once such decisions are named as exemplars of accountability, they can be transposed as authorities for other accountability reforms, or understood as markers of an underlying shift in the international legal order.

Second, the normative engagement of this scholarship is often explicitly mediated. This is normativity for a non-ideal world, in which thicker accounts of democracy are out of reach – recall thus the ILA Committee's hesitation around the reference to "democratic decision-making"; and the way in which GAL scholarship, at the outset, "bracketed" democracy as for the time being illusory and unilluminating as an ideal for global administration.[29]

Third, this scholarship has opened a question about the bounds of law, and the stakes, analytical and normative, of seeing particular norms and practices as law, or generative of it. As the ILA Committee's work reflects, the accountability discussion is always in some relation to law, but not wholly legal in nature. The charge that accountability is not itself a deep-rooted legal term in either common or civil law traditions is correct,[30] and it has been an open question for many lawyers whether it is "capable of being applied in a legal scientific

[27] See, for other literature, Weisband and Ebrahim, 'Introduction'.
[28] *Kadi and Al Barakaat International Foundation v Council and Commission* [2008] ECR I–6351; *Kadi v European Commission* [2010] ECR II-5177.
[29] Kingsbury, Krisch and Stewart, 'Global Administrative Law', 50.
[30] G. Hafner, 'Accountability of International Organizations', (2003) 97 *Proceedings of the American Society of International Law* 236.

discourse".[31] The central impulse of the ILA Committee's work ("with power comes accountability") and many of the mechanisms of accountability resonate with both underlying rationales and existing institutional forms in domestic public law; yet the work sits rather uneasily in most textbooks on the law of international organizations. As some scholars have pointed out, the *naming* of diffuse and ambiguous norms as "law" is itself an intervention,[32] and one with a potentially legitimating effect on the institutional landscape in which these norms are being elaborated.[33]

V. 14 and 21 April 2010, Georgetown University

In two interviews that form part of the World Bank's oral history archives, Edith Brown Weiss reflected on the successes of the Bank's by then well-established Inspection Panel. A former Chair of the Panel, Brown Weiss noted that it had had a "very positive response from civil society, including from academics", and from NGOs, with a "whole slew of writing about the Panel having emerged". The Panel had steadily improved its inspection and outreach practices and served as a model for similar mechanisms at other financial institutions. The interviewer's questions occasionally gave voice to the perspectives of critics, and glimpses of contestation over the Panel's operation: that international NGOs might stir up disaffection among project-affected people or discourage the taking of risk in pursuing development strategies; that, conversely, the Panel might not be known or accessible to many affected communities, that requesters might be at risk of retaliation, and that, once an investigation had been conducted, it was difficult to justify showing the draft report to Bank management prior to the Board meeting at which it would be discussed, leaving the original requesters without the full report until after the Board had considered the matter. Although acknowledging that there was "more that could be done", Brown Weiss resisted most of these criticisms, beginning and ending the interviews with the same evaluation: the Panel had provided a means of giving voice to the affected people, built confidence in economic development, and helped ensure that development was effective and sustainable.[34]

Brown Weiss offered two examples in particular to illustrate the Panel's work. The first was its investigation into the Mumbai Urban Transport Project (2004-05), which had involved the resettlement of about 120,000 people displaced by the expansions in Mumbai's railway and road networks. The second was into two loans supporting a new commercial forest concession programme in the Democratic Republic of the Congo (DRC) (2005–07), which had not taken into account the interests of DRC's indigenous "pygmy" groups. In both cases, the requests that catalysed the investigations came directly from the affected groups, with international NGOs playing a secondary role. If that spoke well of the Panel's outreach work, Brown Weiss also emphasized the achievements of the investigations themselves. Although she did not contextualise it as such, Mumbai was an obvious counterpoint to the NVDP,

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[31] D. Curtin and A. Nollkaemper, 'Conceptualizing Accountability in International and European Law', (2005) 36 *Netherlands Yearbook of International Law* 3, 19.
[32] S. Marks, 'Naming Global Administrative Law', (2004) 37 *New York University Journal of International Law and Politics* 995.
[33] M. Kuo, 'The Concept of "Law" in Global Administrative Law: A Reply to Benedict Kingsbury', (2009) 20 *European Journal of International Law* 997; M. Kuo, 'Inter-Public Legality or Post-Public Legitimacy? Global Governance and the Curious Case of Global Administrative Law as a New Paradigm of Law', (2012) 10 *International Journal of Constitutional Law* 1050; B.S. Chimni, 'Co-Option and Resistance: Two Faces of Global Administrative Law', (2006) 37 *New York University Journal of International Law and Politics* 799.
[34] E. Brown Weiss, 'Brown Weiss Transcript' (14 April 2010) 9, https://oralhistory.worldbank.org/transcripts/transcript-oral-history-interview-edith-brown-weiss-held-april-14-and-21-2010.

where similar failures of resettlement had met with no prompt response. In the Mumbai case, however, the Panel had issued a detailed report analysing the failures and inadequacies of the resettlement programme; it was also "very much involved in the Mumbai follow-up".[35] In the case of the DRC investigation, the Panel discovered that, although there were significant numbers of indigenous people living in areas to be affected, they had been effectively invisible in the work to date: early project design had not acknowledged their existence, and thus the Bank's policy on indigenous peoples had not been applied. The Panel's report catalysed reforms in the Bank's process for determining the existence of indigenous people in Africa who stood to be affected by Bank-financed projects.

Days prior to the oral history interviews, Brown Weiss had used the same examples in a somewhat contrapuntal lecture to the annual meeting of the American Society of International Law. On this occasion, addressing these examples at greater length, she had added more qualifications; neither was a story wholly of success. In DRC, "pygmies were given representation on the national commission reviewing the concessions although under conditions that made it hard for them to participate effectively"; moreover "the difficulties of development in DRC remain[ed]". In Mumbai, "[t]he results for the people are always complicated", although some improvements did follow.[36]

The more sober note was appropriate. In the case of Mumbai, scholars have noted that, following the Panel's submission of the report to the Bank's Executive Board, "Bank management failed to meet their deadline for submitting an action plan and delayed for more than a year, meaning almost none of the targets recommended by the Executive Board were met". One of the lead requesters was imprisoned for a time, raising doubt about the efficacy of Panel measures to protect those making use of its procedure;[37] and "[d]isappointed by the lack of improvement in resettlement programmes despite the Inspection Panel having recorded serious violations of policy, citizens turned once again to the Bombay High Court".[38] In the case of DRC, the Board, on the very occasion of taking note of the Panel's report, expressed support for (and soon after approved) "a large road rehabilitation project that may pose new risks to forests, the environment and forest-dependent peoples".[39]

Such developments raise questions about how accountability mechanisms are chosen, designed, and reformed. The Inspection Panel, as we will see, has moved between different self-conceptions in response to conflicting expectations and criticisms. Yet even Brown Weiss, underlining the mutability, instability and interconnectedness of the world in which the Bank was operating, seems to have felt the need for more systematic approaches. Her address closed by calling for "a fresh look" at accountability, urging the ILC to go beyond the ILA's work, and the elaboration of international organizations' personality, to, "consider breaking out the legal concept of accountability and addressing it in the broader scope of a kaleidoscopic world".[40]

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[35] *Ibid*., 20.
[36] E. Brown Weiss, 'On Being Accountable in a Kaleidoscopic World', (2010) 104 *Proceedings of American Society of International Law*, 477, 485, 486.
[37] B. Sovacool, 'Cooperative or Inoperative? Accountability and Transparency at the World Bank's Inspection Panel', (2017) 1 *Case Studies in the Environment* 900, 901.
[38] S. Randeria and C. Grunder, 'The (Un)Making of Policy in the Shadow of the World Bank: Infrastructure Development, Urban Resettlement and the Cunning State in India', in C. Shore, S. Wright and D. Però (eds), *Policy Worlds. Anthropology and the Analysis of Contemporary Power* (New York: Berghahn Books, 2011) 201.
[39] J. Zalcberg, 'The World Bank Inspection Panel: A Tool for Ensuring the World Bank's Compliance with International Law?', (2012) 8 *Macquarie Journal of International and Comparative Environmental Law* 1, 19.
[40] Brown Weiss, 'Kaleidoscopic World', 490.

VI. Agents of Accountability

It is important to see adoption of the language of accountability by international organizations, and the crafting of particular mechanisms, as instances of *agency*, not as some sort of organic phenomenon ("the rise of accountability") or part of a teleological "constitutionalisation" or "juridification" of governance. This agency is complex, with strategic efforts to shape the narrative about an organization's functioning often mixing with sincere attempts at reform. Institutional decisions are perhaps most obviously driven by the perceived stance of an institution's key interlocutors – that is, by possibilities of the stoppages of funding, member state disengagement, NGO criticism or reputational damage. In some areas there are strong iterative and comparative patterns to institutional reform: international organizations adopt and adapt mechanisms of perceived peers, sometimes under pressure from comparative assessments. Accountability initiatives may stem from the intrinsic conviction or vocational orientation of particular senior staff, influence brought to bear on individual officeholders, or internal struggles for control over particular policies or decisions (in which pressure from outside may well strengthen the hand of some within). As accountability mechanisms are adopted, states or other actors who resist these may react by drawing back or trying to forge alternate structures; a process of regime shifting which is itself inflected by differentials in power and influence.

The design of the Bank's accountability mechanisms was the outcome of considerable struggle. Protests against the NVDP, damning internal reports, together with US NGOs' lobbying for Congressional conditions on US funding for international development assistance routed through the World Bank, forced a suite of procedural reforms in 1993–4: an origin story the Bank itself now sets out in a volume marking the 25th anniversary of the Panel's creation.[41] But the precise shape of these reforms – both a new policy on Disclosure of Information and, our focus here, the Inspection Panel – was determined by a range of actors mobilizing different institutional forms for accountability as an ideal. Influential US NGOs were initially envisaging an appeal commission wholly independent from the Bank and operating something like a court. Many Executive Directors, particularly those representing borrower countries, wanted, if anything, a body more directed to internal learning.[42]

What emerged was a solution "in between".[43] An Inspection Panel of three individuals, not current staff of the Bank, would still be *part* of the Bank: independent of management but reporting to the Bank's Board. It would investigate only whether Bank staff had complied with the Bank's internal policies – policies which had sometimes been influenced by NGOs, and developed in conversation with evolving international law standards, but did not match the human rights and environmental obligations accepted by many states. (The introduction of the Panel as a means of ensuring compliance with policies in turn prompted the rationalization and systematization of the policies themselves, into categories of Operational Policies and Bank Policies (mandatory), and good practices (not mandatory)). At the insistence of borrower countries, it was clear that the focus would be on acts or omissions of the Bank, not the borrower - though acts or omissions of the Bank included failure to follow up on the borrower's breach of obligations under relevant loan agreements that incorporated Bank policies.

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[41] World Bank, 'The Inspection Panel at 25. Accountability at the World Bank' (Washington DC: World Bank, 2018).

[42] Shihata, *The World Bank Inspection Panel*, 25–27.

[43] I. Shihata, 'Shihata Transcript' (23 May 2000) 32, https://oralhistory.worldbank.org/transcripts/transcript-oral-history-interview-ibrahim-f-i-shihata-held-may-23-and-24-2000.

Radically, the Panel would receive requests for inspection directly from affected parties: any collectivity of individuals, however constituted, or a representative of such, but not from single individuals. The formalities were minimal. Requesters had to establish only that their rights or interests had been or were likely to be materially affected by the Bank's failure to follow its operational policies and procedures. On receipt of a request, the Panel was to notify the Bank's management and Board, with management obliged within 21 days to provide the Panel with evidence that it had in fact complied or intended to comply with relevant policies. If the Panel was satisfied that management had failed to demonstrate that it had taken adequate steps to follow policies; that the alleged violation was of a serious character; and that certain other eligibility criteria had been met, the Panel could recommend to the Board that the matter be investigated. The borrower and the Executive Director representing the country concerned were to be consulted both before the Panel's recommendation on, and during any, investigation. The Panel was to have access to all relevant Bank staff and records during its investigations, and could carry out inspection in-country with the consent of the country concerned.

For all its formal innovations, the Panel's procedure did not place requesters on equal footing with Bank management: the Panel's report following the investigation was to be provided simultaneously to management and the Board, but not, at this stage, to the affected parties. Management was required to propose a response within six weeks, notionally in consultation with affected parties, which would be considered together with the Panel report by the Bank's Executive Directors. It was after this consideration that affected parties would be given the full Panel report. Also, the Panel was not empowered to decide anything definitively, or recommend concrete steps; its role was investigatory, a catalyst of a resolution to be developed by management.

This was, again, far removed from the independent commission for which some NGOs had pressed, and from more radical demands for bottom-up participation of affected peoples. In public writings the Bank's General Counsel, Ibrahim Shihata situated the Panel as in sympathy with, but at some remove from, more expansive visions of accountability as political empowerment: "Rather than deferring to an abstract democratic ideal of participation – though in full harmony with it – the procedural involvement of affected local people in the work of the Panel aims at two practical concerns", namely protecting the rights and interests of project-affected people, and improving the very process of development. He emphasized that the Panel was not the sole site of accountability, but only a complement to an intricate and pre-existing accountability ecosystem (of Bank staff to the President, and President to Executive Directors whose powers are delegated by a Board of Governors on which all states are represented).[44]

The Bank's internal reforms had been undertaken with a sense of the potential for sectoral leadership, and other multilateral development banks indeed formalized and expanded their information disclosure policies, and created formal "accountability mechanisms" somewhat similar to the WBIP.[45] However, the very plasticity of "accountability" left open prospects for further reform, and its ambiguity facilitated coalition-building in pressing for transformation. As the NGO One World Trust noted in connection with its accountability "framework" and "guidelines", which it considered applicable to international organizations, NGOs and corporations alike, "the breadth of the issue provides a wide platform on which

[44] Shihata, *The World Bank Inspection Panel*, 116–24.

[45] M. Donaldson and B. Kingsbury, 'The Adoption of Transparency Policies in Global Governance Institutions: Justifications, Effects, and Implications', (2013) 9 *Annual Review of Law and Social Science* 119; E. Suzuki and S. Nanwani, 'Responsibility of International Organizations: The Accountability Mechanisms of Multilateral Development Banks', (2005) 27 *Michigan Journal of International Law* 50.

divergent groups can come together".[46] Research on NGO lobbying at the World Bank has highlighted the convergence on accountability as a priority by NGO networks with quite different preoccupations, and sometimes also sharply different views of the Bank's optimal role in national policy-making.[47] When the One World Trust criteria and metrics, for example, translated accountability into specific institutional features, they delivered, in the eyes of some other NGOs, artificially positive accountability scores for some development banks, that could make it harder to press these banks towards deeper reform.[48]

Even within the carefully confined parameters of the 1993 resolution establishing the Panel, there were tensions over its role and the variants of accountability on offer. Initially, when the Panel was considering admissibility of requests for inspection, it would undertake extensive work, including site visits, prior to seeking Board authorization for an inspection. This sometimes resulted in Bank management seeking to pre-empt inspection by developing remedial plans. This de facto function of the Panel as a quasi-regulatory rather than quasi-adjudicative body highlighted different possible visions of accountability: on the one hand real-time "accountability" to people seeking practical change, sometimes including engagement with the acts of the borrowing countries themselves (which were, strictly speaking, beyond the purview of the Panel's mandate); on the other the more formal ex post facto public adjudication of the Bank's adherence to its own policies.[49] The drift towards more proactive attempts to address difficulties prior to a full-blown inspection, while sometimes supported by Executive Directors representing borrower states, could also give rise to tensions where borrower states felt the Panel was intruding into de facto review of the country's decisions.[50] Following a 1999 review of the Panel's operation, in which not only the Panel and the Board but also diverse NGOs asserted a stake in the future of the Panel, the Board ultimately opted to authorize inspections whenever admissibility criteria were met, rather than leaving an opening for pre-emptive responses by management.[51] This made for a longer process for project-affected people but also a more public assessment of the Bank's decisions.

Yet the perceived need for some more punctual, less formal dispute resolution alternative to full inspection never really went away. Newer accountability mechanisms in other development banks often had, in addition to the fact-finding function, further functions of dispute resolution or grievance redress, in which the mechanism played some role in negotiating or mediating a solution to outstanding issues without proceeding to a full inspection. In 2010, a review of the World Bank's safeguard policies by its internal Independent Evaluation Group proposed the creation of a new grievance redress and conflict resolution mechanism which would operate alongside the Inspection Panel. The eventual Grievance Redress Service (GRS; created 2015) reports to management (the Operations Policy and Country Services Vice-President), in contrast to the Inspection Panel's reporting to the Board. It focuses on "facilitat[ing] solutions agreeable to all parties as a credible and

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[46] R. Lloyd, S. Warren and M. Hammer, 'One World Trust 2008 Global Accountability Report' 11, https://www.oneworldtrust.org/uploads/1/0/8/9/108989709/2008_global_accountability_report.pdf.
[47] P. Nelson, 'Agendas, Accountability, and Legitimacy among Transnational Networks Lobbying the World Bank', in S. Khagram, J. Riker and K. Sikkink (eds), *Restructuring World Politics* (Minneapolis MN: University of Minnesota Press, 2002) 131, 144–7.
[48] R. Lloyd, 'Promoting Global Accountability: The Experiences of the Global Accountability Project', (2008) 14 *Global Governance* 273, 278.
[49] B. Kingsbury, 'Operational Policies of International Institutions as Part of the Law-Making Process: The World Bank and Indigenous Peoples', in G. Goodwin-Gill and S. Talmon (eds), *The Reality of International Law* (Oxford University Press, 1999) 323, 333.
[50] Shihata, 'Shihata Transcript', 34–35.
[51] I. Shihata, *The World Bank Inspection Panel*, 2nd edn (Oxford University Press, 2000) 173–203.

neutral broker",[52] without examining, as the Inspection Panel would, the question of compliance with the Bank's policy.

In the meantime, the Panel itself has been seeking to achieve something like a dispute resolution role. The Panel in 2014 piloted a formalized approach to "early solutions" which they considered could be read into the 1993 resolution rather than requiring formal amendment of it, in which registration of a request for inspection would be delayed to give management and requesters an opportunity to address alleged harms. However, though this avenue offered affected peoples more immediate access to support, NGO evaluations indicated procedural and substantive shortcomings in its application.[53]

These permutations offer a larger window on the way in which accountability mechanisms develop, including moving – sometimes uneasily – between problem-solving and investigative functions. Constituencies within and beyond international organizations seek to shape the institutional arrangements to address pressing needs, political sensitivities and pragmatic obstacles, operating under the aegis of "accountability" but sometimes with sharply divergent results for the people most affected by their work.

VII. 9 March 2020, Washington DC

On 9 March 2020, the Bank announced a package of further reforms in a press release headed "World Bank Enhances Its Accountability".[54] This announcement was the culmination of several years of work, with substantive standards and accountability mechanisms being negotiated in a world markedly different from that of the 1990s: one in which NGO participation is routinised and expanded, but in which emerging powers are now less reliant on Bank for funding – and indeed have become development funders in their own right through new, rival institutions like the Asian Infrastructure Investment Bank and New Development Bank.[55] These new institutions offer, on paper at least, fewer avenues for NGO participation, more ambiguous transparency commitments, and, in some cases, weaker avenues for review of decisions,[56] though their adoption of the basic lines of these mechanisms indicates the extent to which accountability innovations of recent decades have now become part of the script of a development bank.

Following an unprecedentedly open, consultative, multi-year process the Bank had reached consensus in 2017 on a new Environmental and Social Framework (ESF), supplanting earlier policies.[57] The ESF made the first explicit commitment to human rights, albeit in a prefatory vision statement only; and coverage of some of the ESF is now more aligned with the content of treaties on indigenous rights, and the minimum standards of the International Labour Organisation. On the other hand, the ESF contained a more formalized Use of Country System provision – deference to a borrower state's own legal framework where this achieves outcomes materially consistent with the ESF – which, as some NGOs have feared, could

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[52] World Bank, 'Grievance Redress Service Annual Report 2017' (2018) 3, http://documents1.worldbank.org/curated/en/881351536095781539/pdf/GRS-2017AnnualReport-final-08312018.pdf.
[53] N. Bugalski, 'An Evaluation of the Inspection Panel's Early Solutions Pilot in Lagos, Nigeria', https://www.inclusivedevelopment.net/wp-content/uploads/2016/06/Lagos-Early-Solutions-Evaluation.pdf.
[54] World Bank, 'World Bank Enhances Its Accountability', https://www.worldbank.org/en/news/press-release/2020/03/09/world-bank-enhances-its-accountability.
[55] Ph. Dann and M. Riegner, 'The World Bank's Environmental and Social Safeguards and the Evolution of Global Order', (2019) 32 *Leiden Journal of International Law* 537, 547–57.
[56] E. Heldt and H. Schmidtke, 'Global Democracy in Decline?: How Rising Authoritarianism Limits Democratic Control over International Institutions', (2019) 25 *Global Governance* 231.
[57] Dann and Riegner, 'Environmental and Social Safeguards', 550–551.

herald a practical bypass of the constraints that have been worked into Bank policies over time.

The Board had commissioned an external review to examine whether the Panel required updates to operate effectively with the ESF. This review, conducted by an academic long associated with Bank reform efforts, considered inter alia: whether requesters should have access to the Panel's report prior to the Board discussion of it; and whether there should be a formal dispute resolution function in some form. On the former, the Bank had decided in 2018 to revise Panel procedure to allow earlier access to the report by requesters, going some way to level the positions of requesters and management. On the latter, the review noted some disadvantages of the "early solutions" approach piloted in 2014: it was arguably distorting the timelines of the compliance review process and the role of the Panel vis-à-vis Bank management, involving the Panel in overseeing mediation of solutions when it might then have to conduct an inspection later.[58] In the package announced in March 2020, the Bank chose a more far-reaching option: a new Dispute Resolution Service which will sit alongside the Panel institutionally, independent of management, but focus on helping the parties (Bank, borrower state, affected peoples) resolve issues in dispute in a mutually satisfactory way. This Service was characterized by the Chair of the Bank's Board Committee on Development Effectiveness as "bolstering the Bank's accountability framework".[59]

VIII. Politics of Accountability

What emerges from the now 25-year history of the Bank's Inspection Panel is a sense of accountability in movement, between a theoretical ideal available for deployment by both the Bank and its diverse interlocutors and critics, and a series of institutional fixes. These fixes both shape definitions of 'accountability' in intersecting institutional, doctrinal, scholarly and activist literatures, and open new frontiers for contestation of these definitions. The Bank is of course an international organization of a particular kind: a lender rather than a direct actor; and engaged in projects which by their nature can offer major benefits but entail massive dislocation and harm to those in their path. The acts for which accountability is a salient concern thus differ qualitatively from other canonical instances, such as sexual predation by peacekeepers, or corruption or financial misfeasance by officials. Nevertheless, the World Bank case brings out many aspects of accountability across international organizations.

Accountability is often accountability for compliance with an evolving array of policies internal to an international organization, informed by, but not congruent with, legal obligations of states. The interface between obligations applicable to each of the parties in any collaboration between states and international organizations is thus often a source of friction and dispute.

The question of *to whom* an international organization is accountable is rarely answerable in a simple way. As defenders of organizations are keen to point out, mechanisms for persons affected focus on those harmed by a project, not those who might stand to benefit from it. This pattern is consistent with a basic "do no harm" rule, but in some tension with the redistributions of benefits and burdens which major transformations within states often entail. Where there is strong social or protest mobilisation, project-affected people at least may

[58] D. Bradlow, 'External Review of the Inspection Panel's Toolkit', paras 58–61, http://documents1.worldbank.org/curated/en/562131583764988998/pdf/External-Review-of-the-Inspection-Panel-s-Toolkit.pdf.
[59] World Bank, 'World Bank Enhances Its Accountability'.

speak as one; in other cases, different groups may want quite different things, and procedural requirements for engagement with affected peoples may not grapple fully with issues of representation.

In the absence of any wholesale reorientation of the approach to international organizations in international law, or revision of the immunity regime to allow wider use of litigation in domestic courts, internal forms of accountability may offer the most plausible means for affected peoples to intervene in organizational activity. How, then, might those working on the law of international organizations engage further with these mechanisms? We suggest three areas particularly ripe for further exploration.

The first is the way in which non-judicial accountability mechanisms are nestled within a particular institutional framework, and the limits and vulnerabilities this creates. Mechanisms aimed at assessing compliance with institutional policies may have limited power where international organizations decline to play any role at all, or where acute problems fall between the remits of several organizations, or emerge from their interaction. Such mechanisms are also vulnerable to shifts in institutional frameworks themselves. Although, as seen with the multilateral development banks, some accountability mechanisms have become an accepted minimum, carried over in some form when new, rival organizations are established, they may be circumvented by the shifts in decision-making from formal organizations to networks of national authorities, bilateral arrangements, or private bodies which seem poised to accelerate in the near term.[60]

A second area for exploration is what might crudely be called the "effects" of accountability mechanisms. The World Bank is among the most exhaustively researched international organizations, but the more one scrutinizes the record the more difficult it appears to draw definitive conclusions about how these mechanisms change outcomes in particular cases.[61] More systemically, mechanisms like the Panel may offer project-affected people avenues directly into Bank processes which would not otherwise be available – but there have also been suggestions that the sheer proliferation of accountability mechanisms which have built up in the Bank encapsulate the institution in its own processes, rather than making it more responsive to outside voices.[62] Panel members have, as Brown Weiss did, stressed their commitment to understanding the situation "on the ground". However, the Panel is often only one in an array of sites of contestation, and the social, political and economic dynamics of communities affected by international organizations may not be obvious. Grappling with the real effects of accountability mechanisms is going to require international lawyers (and others) to recognize the limits of knowledge generated from the centre of international organizations.

A third area for exploration is the tense but generative relationship between accountability and law. Much public international law scholarship on accountability, and the ILA Committee's efforts, involve repeated observations that accountability is not readily translatable into orthodox categories of legal obligations and rights; followed by efforts at definition and translation. Other currents of scholarship, like that on global administrative law, have seen in increasingly systematic operational policies and accountability mechanisms processes of rule-making, rule-application and rule-enforcement which could and should be

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[60] B. Kingsbury, 'Frontiers of Global Administrative Law in the 2020s', in J. Varuhas and S. Wilson Stark (eds), *The Frontiers of Public Law* (Oxford: Hart, 2020), 41, 67–9.
[61] J. Fox and L.D. Brown (eds), *The Struggle for Accountability: The World Bank, NGOs and Grassroots Movements* (Cambridge MA: MIT Press, 1998).
[62] E. Heldt, 'Lost in Internal Evaluation? Accountability and Insulation at the World Bank', (2018) 24 *Contemporary Politics* 568.

assessed in legal terms.[63] Whether one finds this plausible depends on one's notion of law, and it may not be possible to judge the question in the abstract.[64] Nor are the normative implications of the judgment obvious. Too readily drawing the outcome of contingent institutional struggles under the mantle of law risks naturalising or legitimating particular mechanisms. At the same time, maintaining a notion of law grounded deeply in a constitutionalist tradition may simply not capture the social realities of the transnational space, and the demand for redress in new sites. Privileging orthodox patterns of legal obligation and justiciability may mistake precision of threshold and (notional) possibility of adjudication for power to make change.

It may in the end be more revealing to focus on the diverse, and sometimes unpredictable, way in which claims for and against law-ness work in various agents' negotiations with mechanisms and institutions. The agents include ourselves as lawyers. Whether we embrace accountability as a conceptual category or hold it at a distance, we should keep open the question of how particular effects and institutional forms connect to "accountability" itself. The identity of the proper accountees, and what is owed to them, are fundamental to the normativity of our current transnational governing structures, and what is conventionally accepted as a robust accountability mechanism cannot be assumed to produce "accountability" in all its complex promise.

[63] D. Bradlow and A. Naude Fourie, 'The Operational Policies of the World Bank and the International Finance Cooperation', (2014) 10 *International Organizations Law Review* 3, 6–7; see also, e.g., Dann and Riegner, 'Environmental and Social Safeguards'.
[64] Kingsbury, 'Frontiers', 56.