REVIEW ESSAY

Holding International Organizations Accountable: Toward a Right to Justification in Global Governance?

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The Human Rights Accountability Mechanisms of International Organizations, Stian Øby Johansen (Cambridge: Cambridge University Press, 2020) 328 pp., $125 cloth.

Accountability in Global Governance, Gisela Hirschmann (Oxford: Oxford University Press, 2020), 288 pp., $85.00 cloth.

With power comes responsibility and—ideally—accountability. This is the common point of departure for new books by Stian Øby Johansen and Gisela Hirschmann, both of which explore questions of international organization (IO) accountability in global governance. Johansen does so from a lawyer's perspective, and Hirschmann from that of a political scientist; as such, the two studies are nicely complementary. The interaction between lawyers and political scientists is often disconnected: while scholars from both disciplines frequently study the same phenomena and thus speak about the same issues, they rarely speak to one another; if they do, it is not uncommon that they fail to understand each other because of differences in disciplinary jargon, concepts, and methods. Political-science talk about independent and dependent variables, controlled comparison, and other methodological niceties

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often seems arcane to international lawyers. Even worse, international relations scholars' tendency to gloss over differences between *lex lata* (the law as it exists) and *de lege ferenda* (the law as it should be) is understandably viewed as sloppy by legal positivists. At the same time, political scientists tend to find lawyers' obsession with accurately analyzing the substance of existing law to be rather limiting; instead of asking what the law is, political scientists are much more interested in understanding how the law came about, who benefits from it, and who loses from it—in short, how political power affects normative structures (and vice versa).

However, as we shall see in the following, a certain rapprochement has taken place. In the following section, I will present the legal (promoted by Johansen) and then the political science (promoted by Hirschmann) angles on the issue of IO accountability. I will argue that although Johansen's and Hirschmann's diverging disciplinary affiliations have significantly impacted how they each approached the study of IO accountability, they have accomplished a certain degree of interdisciplinary cross-fertilization.

In the final section, I will argue that the trends analyzed by Johansen and Hirschmann can be interpreted as indicating the emergence of a right to justification in global governance. My analysis seeks to wed the normative focus of international legal scholarship with the causal-analytical thrust of political science, inquiring not only into the normative foundations of the right to justification but also into which variables have contributed to its emergence.

Diverging but Complementary

While both authors look at the phenomenon of IO accountability, they do so in markedly different ways, not least due to their different disciplinary backgrounds. Hirschmann's main objective is to explain accountability trends, leaving as a secondary concern the normative appraisal of these trends and the effectiveness of the various mechanisms for doing so. The opposite holds true for Johansen: his primary focus is on the normative aspects of accountability, while he addresses the causal dynamics underlying the emergence of accountability mechanisms only in passing.

What the authors have in common is their impressive knowledge of their respective disciplines. In terms of empirics, both Johansen and Hirschmann offer compellingly argued case studies that are insightful, rich in empirical detail, and lend significant support to their respective theoretical arguments. It is in each author's treatment of studies stemming from disciplines other than his and her

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own (in Johansen's case, political science and social psychology; in Hirschmann's case, international legal scholarship) that the works display certain imprecisions and inaccuracies.

A Legal Approach

How can international organizations be held accountable for violating the human rights of individuals? This is the core question motivating Johansen's study. To answer it, Johansen develops a normative framework for assessing IO accountability mechanisms, and subsequently uses this framework to evaluate a range of mechanisms in the fields of peace and security (for which he investigates the European Union); migration (for which he focuses on the United Nations Office of the High Commissioner for Refugees); and international criminal justice (for which he analyzes the International Criminal Court). He concludes that in none of these cases have sufficiently robust accountability mechanisms been established. Additionally, he uncovers significant variation across cases, with the ICC and the UNHCR having evolved the most and least advanced accountability mechanisms, respectively, and the EU finding itself somewhere in between.

Overall, Johansen's study constitutes an important, systematic, and clearly structured contribution to the literature on accountability in global governance. The book is at its strongest in the latter half, where Johansen considers three case studies. These chapters are compelling, informative, and nuanced. They are, moreover, written in a clear and concise style that is also accessible to nonlawyers. However, the early, more theoretically oriented chapters are less satisfying. In order to assess the sufficiency of IO accountability mechanisms, Johansen offers four normative yardsticks derived from procedural justice theory and the right to an effective remedy. These yardsticks are access, participation, neutrality, and outcome, which respectively entail that accountability mechanisms ought to be accessible to complainants, ought to allow for their effective participation throughout the proceedings, ought to be free from bias, and ought to offer substantive redress as well as effectively enforce redress claims. In my critique of Johansen, I would like to flag two points in particular: one regarding his incorporation of insights from disciplines other than his own; and the other, on a related note, his choice of normative yardsticks.

Johansen shows great willingness to engage with methodological and theoretical discussions in adjacent fields. At the same time, however, he sometimes presents a truncated view of research done in other disciplines and does not always critically

reflect upon the nonlegal work he cites. To its great credit, Johansen's monograph is probably the first piece of work by a legal scholar I have come across that—albeit cursorily—engages with questions of research design. For example, he cites the work of political science–method guru John Gerring in his own discussion of case selection. This methodological reflection clearly increases the rigor of Johansen's study and is thus commendable. This being said, I would have liked more reflection upon the consequences of extreme case sampling. While Johansen admits to having selected outlier cases, he does not address the consequences of this decision for potential inferences regarding the broader universe of cases.

Johansen also ventures into the territory of other disciplines when developing his normative framework. As the section in which he does so is arguably the book's main contribution to the issue of IO accountability, I would have liked to have seen more nuance and critical self-awareness regarding the theoretical choices made by the author. As mentioned above, Johansen relies heavily on social-psychological research into procedural justice in developing his normative yardsticks—specifically, Tom Tyler's writings on justice as fairness. Johansen notes that according to Tyler's approach, there are four variables that shape norm addressees' perceptions of fairness: "Opportunities for participation (voice), the neutrality of the forum, the trustworthiness of the authorities, and the degree to which people receive treatment with dignity and respect" (p. 12). While Tyler's theory has resonated strongly within the scholarly community, there is another, equally prominent approach in social psychology called social identity theory (SIT), according to which individuals' identification as members of larger social groups provides them with self-esteem and a sense of belonging. At the same time, regrettably, this identification clouds their judgment when it comes to assessing the wrongdoings of their own social group (the in-group) and showing empathy for other social groups (the out-groups). SIT has been applied to the study of international criminal courts, where research has shown that different social groups consistently favor court verdicts that go against the out-group and correspondingly reject verdicts condemning the in-group. Thus, SIT contradicts Tyler's claim that how decisions are made is more important than the outcome of the decisions. Johansen's discussion of Tyler's theory as well as his own normative framework would benefit from grappling with these contradictory findings.

Another shortcoming of the book's normative framework is Johansen's deliberate decision to collect data on only half of the normative yardsticks he deems of

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relevance. As he considers the collection of data on the variables "trust" and "respect" to be too "time-consuming" (p. 103), he rather offhandedly decides to omit these two factors from his framework. I did not find it very convincing that Johansen made a decision regarding which normative yardsticks are fundamental based on considerations of research logistics and efficiency—especially since the methodological problem he mentions could have been circumvented by making a greater effort to collect data from individuals who actually used accountability mechanisms and ask them to what extent they trusted the procedure and felt respected in the process. Despite these caveats, Johansen's decision to generate his own primary data as such is to be commended, especially as this constitutes a still rather uncommon approach in international legal scholarship.

In the concluding chapter, Johansen briefly addresses the variation across cases. As my training is in political science, my intuitive reaction to this finding was to ask *why*—what explains the varying qualities of accountability mechanisms established by different IOs? While Johansen briefly mentions two potential explanatory factors—image and timing—he does not dwell upon this issue further. Hirschmann, by contrast, to whose work I will now turn, has made the "why" question the core of her research design, which again demonstrates the complementarity of the two studies.

A Political Science Approach

Hirschmann begins her inquiry by pointing out that in light of multiple scandals of human rights violations involving IO personnel, such as rape scandals implicating UN peacekeepers, IOs have established accountability mechanisms to reassert their legitimacy with a global audience. At the same time, attributing responsibility has become more difficult as IOs outsource more and more governance tasks. As a result, vertical forms of accountability have become increasingly unfeasible. Instead, Hirschmann detects a trend toward what she calls "pluralist accountability"—mechanisms used by third parties to hold IOs and their implementing partners accountable for violations of human rights—and the purpose of her book is to explain this phenomenon. Post-9/11, for example, the European Court of Justice (ECJ) in the *Kadi* case demanded accountability for human rights violations committed by European states in the execution of UN Security Council sanctions resolutions against terror suspects. The intervention of the ECJ demonstrates the relevance of third parties in pluralist accountability constellations. Hirschmann finds that pluralist accountability emerges from two factors: first,

an opportunity structure characterized by a competitive environment in which different actors vie for influence as accountability holders; and second, the vulnerability of the implementing actor or mandating authority vis-à-vis human rights claims. Actors are vulnerable to human rights claims if they are unable to "justify their actions by a strong normative frame other than human rights" (p. 8). Consequently, if the identity or mandate of said actors renders them vulnerable to human rights demands, they are more likely to accept being held accountable by third parties.

Hirschmann's book is divided into eight chapters. The first chapter introduces the phenomenon of pluralist accountability and the second presents the author's theoretical framework. Subsequent chapters apply her theoretical framework to peace missions in Afghanistan, Bosnia, and Kosovo; to the EU troika's austerity policies in Greece, Portugal, and Ireland; and to global health governance in India. The outcomes in these cases vary, with pluralist accountability emerging in five of the cases but not in the other three. The conclusion recapitulates the findings from the case studies and reflects upon their implications for IO legitimacy.

Hirschmann addresses an important gap in the literature on accountability, which has thus far not taken on the conditions under which pluralist accountability emerges. Hers is an empirically rich account of why pluralist accountability materialized in some cases but not in others. She offers a nuanced portrayal of the political science literature and makes a convincing claim that pluralist accountability is a phenomenon that is as pervasive as it is underresearched. She carefully analyzes the interaction of various factors (and actors) in her respective case studies and demonstrates that the outcomes observed in each case could be attributed to the coincidence (or absence) of the two factors of competition and vulnerability noted above. While, overall, Hirschmann makes an insightful contribution to the literature on accountability in global governance, I would like to raise two points of critique: one regarding her treatment of the legal literature and the second regarding the level of aggregation of her theoretical framework, which seeks to reduce a broad phenomenon to the coincidence of only these two variables.

To begin with, writing, as she does, from a political science perspective, Hirschmann's review of international legal scholarship exhibits certain inaccuracies and blind spots. For instance, she erroneously attributes the legal anthropological concept of legal pluralism, pioneered by Eugen Ehrlich and others, to

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the New Haven school (NHS). Further, Hirschmann's citation of Gunther Teubner as an alleged representative of the NHS could not be further from the truth: The NHS and Teubner represent two diametrically opposed schools of legal thought. The NHS is known for its teleological jurisprudence and its blurring of the boundaries separating the legal and the political spheres. Teubner's conceptualization of the law, on the other hand, is as a normatively closed system that reproduces itself according to its own rules and maintains a clear binary distinction between the legal and nonlegal. Another weakness is Hirschmann's rather brief discussion of the International Law Commission's Draft Articles on the Responsibility of International Organizations (DARIO), which are relevant to the purposes of both Johansen's and her own argument, as accountability cannot be demanded unless responsibility is established first. It would have been nice to have some expanded discussion of the gray areas and ambivalence that characterizes scholarly debate around DARIO, rather than taking them at face value.

My second point of critique regards the level of aggregation of Hirschmann's theoretical framework, which is plausible overall but would have benefited from breaking down the two broad categories—competition and vulnerability—into more specific subfactors. There is a certain disconnect between the high level of generality exhibited by the theoretical framework and the complexity of the case studies. For instance, in the theory section, Hirschmann could have disaggregated the concept of vulnerability by addressing the different sources of vulnerability. At some point in her empirical analysis, she introduces a new distinction between "material" and "moral" vulnerability. Other explanatory factors that pop up rather haphazardly in the case analysis are the scope of IO authority, the role of individual leadership, and the social construction of victimhood, just to name a few. The case studies suggest that all of these variables affect the emergence of pluralist accountability. Overall, a more nuanced theoretical framework would have better captured the complexity of the case studies. While the purpose of theories is indeed to reduce complexity, this should not lead to their disconnect with reality.

Toward a Right to Justification in Global Governance

The limitation of political power is an important function of the law. The law imposes these limits, inter alia, by forcing power holders to provide reasons to those who are affected by their decisions. While this practice of reason giving,

of providing justifications for one's actions, is deeply ingrained in the legal culture of democratic states, the international sphere has long remained an unaccountable realm. Over the last few decades, however, as the authority of international organizations grew and scandals about UN peacekeepers raping or mistreating refugees broke, demands for accountability arose and international organizations responded by establishing fora where aggrieved individuals could ask for justification.

I maintain that this proliferation of mechanisms, holding not only states but also, more recently, international organizations to account indicates the emergence of a right to justification in global governance. I do not claim that the right to justification has consolidated into an international legal norm. What I do want to suggest, however, is that we can observe a changing political climate and the emergence of a normative expectation that requires public authorities in global governance to answer to those who are affected by their decisions. While I do assume that this changing political climate will eventually affect the progressive development of law, I do not believe that the right to justification has yet become a settled norm of customary or general international law.

The "right to justification" was first theorized by German political philosopher Rainer Forst.[1] Forst recognized the inevitability of normative pluralism, which denotes the simultaneous existence of different and, at times, competing normative orders—a condition that is much more pronounced in international law than in the domestic realm. Forst nonetheless believed it possible to arrive at intersubjectively shared principles of justice that are based on what he called "the individual's fundamental right to justification."[2] On this view, every individual has the right to receive reasons for actions that are morally relevant. This right is anchored in the principle of human dignity, which requires treating the individual not as a means to an end but as an end in itself. This means making them feel that they count, that they are seen, and that their voices are being heard: this is fundamental to human dignity. Being ignored, not seen, or considered irrelevant is much more painful and damaging to a person's self-esteem than being disliked, for instance.

Treating individuals as ends entails that they have the right to receive justifications for actions that affect them, and political institutions, which authorize policies that guide institutional actions, must be designed to allow for appropriate processes of reason giving. The right to justification thus implies a concomitant duty on the part of public authorities to give reasons to those affected by their decisions and to institutionalize mechanisms that will give effect to the "power

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of the better argument," allowing for reasoned debate about whether the decision is justified. While Forst does not himself focus on IO accountability for violations of fundamental human rights, his theory can be applied to any institution, such as an IO, that exercises authority over individuals, thereby engaging in morally relevant actions that require justification. Individuals whose fundamental rights are affected by the exercise of IO authority are thus entitled to ask for reasons.

Claiming the emergence of a right to justification in the international realm raises two broader concerns, a procedural one and a substantive one. The procedural concern involves the institutionalization of justificatory discourses: How should these mechanisms be designed? What provisions should be made for access, impartiality, and so on? The substantive concern, in turn, is not about process but about the content and quality of reasons given to those who participate in this justificatory process. Put differently, What counts as a good argument? Which (or whose) norms should inform justificatory discourses? How are different goods to be balanced? The substantive dimension of the right to justification is at least as complex and challenging as the procedural one; elsewhere I have argued that a "good" reason is one that establishes coherence between the norms on which it is based and the values of the international community at large.[3] Coherence implies that the law is perceived as an internally consistent set of rules, and, moreover, requires consistency between the law and important nonlegal norms held by society at large. Law is "by its very nature . . . deeply implicated in the practices and conventions of the communities it governs."[4] This obviously creates a host of follow-up questions, especially considering the normative pluralism prevailing in the international realm; however, for reasons of space, I cannot enter into this discussion here.[5]

In sum, the right to justification requires the institutionalization of appropriate mechanisms for reason giving, in which rights holders are allowed to articulate their concerns and power holders are expected to answer. The accountability mechanisms reviewed by Johansen and Hirschmann can therefore be seen as responding to this basic moral right to justification held by individuals. The establishment of such mechanisms creates more opportunities for "rhetorical entrapment,"[6] which is a process whereby self-interested actors strategically invoke collective norms to legitimize their particularistic interests. Those same actors thereby inadvertently create a normative expectation that morally and politically compels them to act in the future in conformity with their prior justifications, even when it is not in their self-interest to do so (here again, we can observe

the "civilizing effects" of the coherence requirement). Consequently, the creation of accountability mechanisms in and of itself—however imperfect they may be—represents an important first step toward socializing actors into the acceptance of community norms.

A major follow-up question that emerges from the preceding analysis is, What conditions are required for the right to justification to consolidate in global governance? That is, What is needed for the right to justification not just to remain aspirational but to become a right that is successfully enshrined in accountability mechanisms that make IOs (and other kinds of actors involved in the execution of governance tasks) answerable for their actions? Hirschmann's and, to a lesser extent, Johansen's study suggests certain variables that increase the likelihood for the right to justification to be fulfilled in global governance: whereas Johansen only cursorily addresses variables such as image and timing, Hirschmann casts a wider net, subsuming a variety of explanatory factors under her two overarching categories, competition and vulnerability.

A New Framework

In concluding this review essay, I want to suggest a broader and, at the same time, more finely grained framework of potential factors that seem to impact the extent to which the right to justification solidifies in global governance. These conditions can be grouped into three categories: (1) the factors pertaining to the nature of the actor from which accountability is demanded; (2) the characteristics of the human right that is being violated; and (3) the features of the actor that is demanding accountability. Some of these variables figure more or less prominently in Hirschmann's and, to a lesser extent, Johansen's analysis, but neither of the two authors reflects upon these factors in a comprehensive and systematic manner. Using the clusters of variables below, I thus seek to complete the puzzle of a right to justification in global governance, some pieces of which are put into place by Hirschmann and Johansen.

Regarding the first condition, there are certain characteristics that would seem to make an IO more susceptible to establishing accountability mechanisms; namely, its organizational identity, which, in turn, can be disaggregated into subfactors such as its mandate and organizational culture—somewhat similar to Johansen's argument about "image" and Hirschmann's point about "vulnerability." I hypothesize that an actor whose mandate explicitly incorporates human

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rights and/or the rule of law would be much more responsive to demands for justification than an actor whose organizational goals and principles do not incorporate such an element; critics are more likely to demand that the IO practice what it preaches when the organization portrays itself as a guardian of human rights or the rule of law. Organizations that do not have such a mandate, by contrast, will be less likely to accept a responsibility to justify their actions for those whose rights have been violated as a result of their operations. The International Monetary Fund (IMF), for instance, always deflected demands for accountability, arguing that human rights were not part of its mandate, and that the fund was not bound by the rights enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESC). On a related note, the fund's organizational culture also made it difficult for accountability demands to be heard, and the IMF proved resistant to change—in large part due to its strictly hierarchical structure, its recruitment policies, and its insufficient self-evaluation, as well as its reluctance to seriously engage with reform initiatives emanating from civil society.[7] Another condition belonging to the first category is individual leadership; that is, the norm entrepreneurship of committed individuals promoting the right of justification. These individuals can be found either within the IO's management and staff or within member states of the organization. In the international financial institutions, for instance, IMF managing directors Dominique Strauss-Kahn and Michel Camdessus, as well as World Bank president Robert McNamara, each pushed for greater accountability during their respective tenures. In the field of peace and security, as Hirschmann's case studies show, individuals such as Tom Koenigs, the head of the United Nations Assistance Mission in Afghanistan, and U.S. president Barack Obama played crucial roles in promoting accountability.

Moving on to the second category, I hypothesize that the nature of the right that is being violated also plays a role in shaping accountability dynamics. I assume that a procedural right to justification can more easily be claimed if the substantive norms that were breached are not culturally specific but universally accepted, which makes it easier to garner broad support for accountability claims. Human rights are commonly divided into three generations, with decreasing levels of acceptance: first-generation rights are those rights enshrined in the International Covenant on Civil and Political Rights; second-generation rights are those that are codified in the ICESC; and third-generation rights are collective or solidarity rights that have been enshrined in certain regional human rights

treaties in the non-Western world, such as the African Charter on Human and Peoples' Rights. I think that it is likely that a procedural right to justification can more easily be claimed in the case of violations of first-generation rights than in the case of third-generation rights, which are especially contested in the Global North. The nature of the right likely has an impact on the scandalization potential and thus the justificatory pressures arising out of violations of said right.

Apart from the type of right, another important factor is the timing of its violation: If the transgressions are publicized at a time where international and domestic audiences are receptive to calls for greater accountability, it is more likely that the right to justification will be realized. This is the factor of "world time"—briefly discussed by Johansen in his analysis of the role of timing—which means that it not only matters what kind of normative innovation is introduced but also *when* it is introduced. Exogenous shocks such as major wars, terrorist attacks, financial crises, and pandemics often initiate a search for new ideas and thus facilitate the diffusion of new norms. As constructivist IR scholars have pointed out, the factor of world time explains why certain (cataclysmic) events lead to a search for new ideas and the rise of novel normative expectations within the international community.[8] Attention is a scarce resource in global governance, and human rights violations committed by IOs, no matter how egregious they may be, have to compete with other scandals, other transgressions and tragedies, and the factor of world time (partly) explains why some rights violations assume salience at a certain point in time and why some do not.

The third, and final, set of factors influencing the realization of the right to justification pertains to the characteristics of the actor demanding accountability, such as its material resources, credibility, strategy, and so forth. As I have demonstrated elsewhere in a study of civil society participation in IOs,[9] the extent to which civil society organizations (CSOs) made their voices heard has depended on their mandate and the issue area in which they operated, but also their material resources, level of donor dependency, expertise, credibility, and style of engagement. These findings are not confined to CSOs but can also be applied to other actors seeking to promote the right to justification in global governance. Where these actors are well resourced, credible, skilled, and have a constructive working relationship with IOs, they would seem to stand a better chance of successfully demanding accountability than claimants that do not possess these characteristics.

In sum, the realization of the right to justification depends upon a variety of factors; what I have suggested here is merely a tentative list of preliminary

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hypotheses that will need to be subjected to rigorous, comparative testing in the future to flesh out the causal weight accorded to each of these factors as well as their cumulative effects. These avenues for further research will depend on disciplinary cross-fertilization and a willingness to move out of our comfort zones as scholars. Johansen's and Hirchmann's work provide important first steps in this direction.

NOTES

[1] Rainer Forst, *Das Recht auf Rechtfertigung: Elemente einer konstruktivistischen Theorie der Gerechtigkeit* (Frankfurt: Suhrkamp, 2007).
[2] Ibid., p. 21.
[3] For my elaborations on the coherence requirement, see, for example, Theresa Reinold, "Cynicism and the Autonomy of International Law," in Björnstjern Baade, Dana Burchardt, Prisca Feihle, Alicia Köppen, Linus Mührel, Lena Riemer, and Raphael Schäfer, eds., *Cynical International Law?* (Heidelberg, Germany: Springer, 2021), pp. 15–36.
[4] Gerald J. Postema, "Implicit Law," in special issue, "Lon Fuller," *Law and Philosophy* 13, no. 3 (August 1994), pp. 361–87.
[5] For further elaboration, please see Reinold, "Cynicism and the Autonomy of International Law" (2021).
[6] Frank Schimmelpfennig, "The Community Trap: Liberal Norms, Rhetorical Actions, and the Eastern Enlargement of the European Union," *International Organization* 55, no. 1 (Winter 2001), pp. 47–80.
[7] Theresa Reinold, "The Path of Least Resistance: Mainstreaming 'Social Issues' in the International Monetary Fund," *Global Society* 31, no. 3 (2017), pp. 392–416.
[8] Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," in "International Organization at Fifty: Exploration and Contestation in the Study of World Politics," special issue, *International Organization* 52, no. 4 (Autumn 1998), pp. 887–917, at p. 909.
[9] Theresa Reinold, "Civil Society Participation in Regional Integration in Africa: A Comparative Analysis of ECOWAS, SADC, and the EAC," *South African Journal of International Affairs* 26, no. 1 (2019), pp. 53–71.

Abstract: This essay suggests that the accountability trends explored by Stian Øby Johansen and Gisela Hirschmann in their respective monographs should be viewed as indicating the emergence of a right to justification in global governance. Both Johansen and Hirschmann seek to advance the interdisciplinary conversation about the accountability of international organizations—Johansen by developing a normative framework assessing the quality of IO accountability mechanisms, and Hirschmann by seeking to identify the variables that shape the evolution of what she calls pluralist accountability. Building upon their analyses, I put forward a set of hypotheses about the procedural and substantive dimensions of the right to justification as well as the conditions for its consolidation in global governance.

Keywords: accountability, global governance, international organizations, right to justification, Gisela Hirschmann, Stian Øby Johansen