CIVIL SOCIETY AND WTO ACCOUNTABILITY

Background Note

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Civil society organizations play an essential role in holding international organizations to account by acting in some way on behalf of those affected by decisions. Though still a delegation model—the civil society organizations represent citizens as principals assessing the actions of their agents in government—civil society organizations can assess the official reports, provide additional information, and provide alternative interpretations. They can, in other words, act as a corrective to the official story. They may find more or less information on the practices in question, and they may be able to offer compelling alternative interpretations. Vigorous civil society organizations reports may also increase the policy space available to Secretariats, ensuring that Members allow a more ambitious and comprehensive transparency exercise than might otherwise be possible. This potentially valuable role can be obscured by disagreement over the many different definitions of accountability. These different definitions affect the scope of accountability, both in terms of the number of people who ought to be held accountable: from a minimalist view that limits accountability to Members and those directly responsible for decision-making to a widely expansive view that extends to a global demos, which implicates accountability in larger questions of democratic legitimacy. These debates are of particular interest to NGOs and other civil society organizations (CSOs) as they work to hold the World Trade Organization (WTO) accountable.

The different definitions and conceptualizations of accountability—and the different ends to which people use them—underscores that accountability is a political project. Not only is there a lot at stake when there are multiple actors talking about accountability obligations (and sanctions), but if academics, WTO members, and NGOs have different understandings of accountability then they risk talking past each other. If this happens then not only will accountability be compromised, but other goals of global governance could be compromised. This danger is especially pronounced if these different understandings of what accountability entails – and where it “fits” in the larger discourse of global governance – are ones that are not made explicit. It is one thing to disagree on the definition, scope, and mechanisms of accountability in the global context (something that is perhaps inevitable but also something that the parties can work through); it is another thing, however, to start from different premises and, by failing to discuss the concept in a way that is mutually accessible, to talk past each other for want of a common understanding of the terms of the debate. Another factor to take into account is the difference between the way that accountability is imagined and the way it actually operates; it is important to remember that “definitions and framings of accountability tend to be driven by normative agendas rather than by empirical realities” (Weisband and Ebrahim 2007, 13). If we are to take questions of accountability seriously then this means ensuring that we consider both the normative and empirical aspects of accountability. Why we value accountability is important. Just as importantly, we must ensure that accountability standards are compatible with what actually happens and the changes that are plausible.

This background note for the IISD-ENTWINED Workshop first surveys the debates on the meaning of accountability and transparency, in Part 1 before discussing the potential role of civil society, in Part 2. The note concludes, in Part 3, with a discussion of the suggestions in the literature on future roles for civil society organizations.
1. Accountability

There are many conceptions of accountability—something that makes offering a definition quite difficult. A standard definition (by way of an example) is: “for A to be accountable to B means that A agrees to external scrutiny by or on behalf of B (gives account to B) and that B's response will make a “practical difference” to the conduct of A, either retrospectively, prospectively, or both” (Black 2008, 14). Also standard is that accountability may require relationships of answerability (where actors must justify their actions) and a corresponding ability of enforcement or sanction if an actor's actions or justifications are unsatisfactory (Schedler, 1999; Goetz and Jenkins 2007; Sperling 2009).

Elaborations on what this means vary. There are those who argue that, at its core, accountability has a number of key features or components. For instance, Mulgan (2000, 555) argues that accountability has three features: “It is external, in that the account is given to an outside authority; It involves social interaction and exchange, with one side seeking answers or rectification, while the other responds and accepts sanctions; and It implies rights of authority, where those calling for an account assert rights of superiority over those who are accountable.” Weisband and Ebrahim (2007) cite four core components of accountability: transparency, answerability or justification, compliance, and enforcement or sanctions; here accountability “relies on the presence of all four.” Scholte (2011, 6) notes a set of similar aspects: transparency; consultation; evaluation; and correction.

The above definitions are only a small sample of the different ways that people conceptualize accountability. Understandings of accountability become even more complex with additional questions about the specific people and groups involved. While the “A to B” presentation of accountability presents a clear chain, the practice of accountability in the context of global government is far more complex. As Scholte (2011, 19) notes, “it is well-nigh impossible to link accountability neatly and simply to a single decision point, or even to a single type of actor like the state”; instead the more appropriate way to conceive of accountability is in terms of complex networks rather than players in isolation (or a series of “A to B’s”). Accountability networks, or accountability relationships, offer a lot more to our understandings of what accountability means. They do so, however, by raising additional issues. As Mashaw (2005, 17) argues, “in any accountability relationship we should be able to specify the answers to six important questions: Who is liable or accountable to whom; what they are liable to be called to account for; through what processes accountability is to be assured; by what standards the putatively accountable behavior is to be judged; and, what the potential effects are of finding that those standards have been breached.”

The many definitions—and the ease with which elaborations upon them lead to complex and divergent understandings of accountability—have important implications. As Kingsbury and Stewart (2008, 10) note: “accountability has become a rhetorical slogan in the globalization debates. Too often, demands are made for greater accountability without serious analysis of precisely what it consists in, how it can be achieved, and what its goals are.” As Keohane (2008, 362) notes: “To many, accountability seems self-evidently a “good thing”, so that more accountability is better than less. Demands for “more accountability” are therefore often viewed as self-evidently valid in normative terms. But a moment’s thought reveals that one person’s accountability – a good thing – is someone else’s over-regulation, meddling, or bureaucratic red tape – a bad thing.”

What is ultimately important as we try to understand accountability is why we are asking the accountability questions (Wolfe 2011, 9). Without this clarity academics, IOs, and CSOs risk speaking past one another, overlooking the significant impact that context makes, and being unable to evaluate—and properly understand—the organization or system whose accountability is under analysis.
Accountability and Transparency

The strong relationship between accountability and transparency is a common theme in the literature; the problem, however, is that academics disagree about the nature of the relationship between the two. In various accounts: transparency contributes to accountability (Kingsbury and Stewart 2008; Gillies 2010; Bäckstrand 2008; Najam and Halle 2010); accountability contributes to transparency (Scott 2000); the two are sometimes inextricably connected with “leading” relationships unclear (Laan 2010); accountability may be used as a synonym for transparency (Elsig 2007; Bovens 2007); and transparency and accountability conflict with each other (Dicerni 2006).

As with accountability, transparency means different things to different people. Its relationship with accountability is ambiguous, but for the most part transparency is viewed as a means to achieve better accountability. This is in large part because “principals can only hold agents accountable in so far as they have reliable information about the agent’s conduct” (Steets 2005, 12). Some people identify the problems with setting out the relationship in this way; what this underscores is the need to examine not only the different elements within the two concepts (ie: to whom, for who, to what effect) but also the ways that a variety of different concepts (such as democracy, legitimacy, and good governance) influence views toward transparency and accountability, and to the relationship between these two distinct concepts (Bryant 2007, 169).

Transparency as a policy tool in the WTO is reasonably well understood (Collins-Williams and Wolfe, 2010), but its importance for accountability is more complicated. Transparency, like accountability, has different components. The WTO distinguishes between two main types of transparency: internal and external. Internal transparency is concerned with the fair participation of all Member States in the decision-making process, while and external transparency “deals with the closed character of the organization towards the outside world” (Bonzon 2008, 759).

Just as accountability is a political project, conceptions of transparency (how we understand it and choose to use it) are connected to questions of power. Evaluations of the WTO’s transparency standards are affected in this way, as Bonzon (2008) notes, with “the debates on external transparency reveal[ing] two opposing views among WTO Members”; the division here is between Western countries that support reforms to improve external transparency (i.e.: “opening sessions of WTO committees to nonstate actors and extending disclosure of WTO documents”) and developing countries opposing reforms on several grounds, particularly over a lack of resources to manage increased participation.

Multiple Accountabilities and Polycentrism

A key organizing question in understanding accountability is “accountable to whom?” This question becomes even more complex when we examine it in the context of global governance. When we consider that accountability is best thought of in terms of accountability relationships and note that accountability occurs in networks then it becomes apparent that different people, groups, and institutions will have different conceptions of accountability and, corresponding to this, different kinds of accountability mechanisms. These different conceptions of accountability can lead to conflicting expectations that undermine organizational effectiveness—what Koppell (2005) labels “multiple accountabilities disorder.”

The multiple accountabilities that simultaneously have parties as accountability-holders and under obligations of accountability (Keohane 2008, 364) point to a polycentric problem. Because there are numerous ways to approach accountability, as well as numerous principles and agents of accountability—both within and outside particular organizations—not only are the lines of accountability difficult to identify, but there are numerous “centres” of accountability; that is, numerous accountability relationships found in different places, each looking for something
different as principals hold their agents accountable for a variety of things. These multiple centres—or “accountability regimes”—overlap and conflict, thereby posing a problem to the task of understanding accountability; this, as previously noted, can mean very different things to different people depending on where they look.

The WTO contains numerous accountability regimes. Within the organization the polycentric problem is particularly stark. Accountability processes vary widely; this is especially evident when social justice and sustainable development are the goals (Wolfe 2011). Overlapping and multiple accountabilities produce accountability “trilemmas,” where enhancing one aspect of accountability undermines our ability to achieve another aspect (Wolfe 2011). Partnerships between NGOs may exacerbate these difficulties. It is important not only to set out the various lines of accountability within an organization, but to note where they intersect, where they interact with lines of accountability in other IOs, CSOs, or NGOs, and where they conflict. When confronted with a trilemma it is import to understand what is at risk when we strengthen one (or more) aspects of accountability.

While acknowledging that polycentricity underscores the difficult task of understanding accountability, these multiple locations provide opportunities to study different aspects of accountability. To this end, Raggo (2011) asks what we can learn from civil society and transnational organizations in terms of accountability. It is important also to note how polycentrism affects regulatory structures. As Smith (2008, 73) notes, “when we place a regulatory structure on top of a polycentric problem we are only taking a single static picture of the problem” the consequence of this is that “this snapshot becomes part of the problem and not the solution to it…the snapshot is static, whereas the problem is always in a state of flux.” IOs and CSOs/NGOs need to consider this in their attempts to better understand relations of accountability and legitimacy within and between the WTO and CSOs.

2. The WTO and the Role of CSOs
As noted, the WTO has multiple accountability regimes and faces an accountability “trilemma.” Because accountability networks are so complex it is particularly important to examine the relationship between the WTO and CSOs/NGOs. What happens in the WTO clearly affects a large number of people; given that lines of accountability outside the WTO (for example, citizens holding their governments accountable for their involvement in a country’s membership in the WTO) are ones that make it very difficult in practice for citizens to hold the WTO to account, CSOs and NGOs push for influence in the organization as a means (amongst other reasons) to hold the WTO to account. The argument here is that “civil society can bridge the gulf between citizens and global institutions, with the implication that improved accountability would result” (Scholte 2010, 2).

This raises many questions. To what extent do NGOs want and require particular kinds of accommodation and legal standing at the WTO? How much of NGOs’ agendas and goals implicate the WTO? To what extent does this require direct engagement with IOs? To what extent do NGOs think about their own accountability?

*Civil society organizations*
CSOs and NGOs are not accountable to the WTO, nor does the WTO have formal obligations of accountability toward them. Despite this, there is increasing CSO and NGO engagement with the WTO and an increasing willingness on the part of the WTO to meet with these groups.

The main role of CSOs appears to be a deliberative one (Woods 2007, 36). CSOs and NGOs engage in protest and media campaigns as well as attend meetings with WTO officials. As Steffek (2010, 59) notes, “empirical evidence suggests that nongovernmental actors play a key role in
triggering transnational public debates on global governance.” Actions such as reframing the issue of violence against women as a human rights problem has, as Steffek (2010, 60) notes, been a successful way to mobilize an international constituency.

With CSOs and NGOs having such influence, questions have arisen about the accountability of these organizations. As with IOs, NGOs have multiple accountability relationships and obligations, as well as significant diversity across groups (Ebrahim 2007, 206), and these accountability relationships are not without their problems. As Ebrahim notes:

nonprofit organizations are accountable to numerous actors (upward to patrons, downward to client, and internally to themselves and their missions). These relations may be said to form a system of accountability. Within this system, the dominant emphasis currently remains largely on accountability of NGOs to donors or patrons. This focus can be seen as myopic in two respects. First, it privileges one kind of accountability relation over a broader accountability system. Mechanisms for holding NGOs accountable to funders, for example, can overshadow or marginalize mechanisms for holding NGOs accountable to communities or to their own missions. In other words, this myopia focuses attention on funders and external stakeholder demands rather than on NGO missions and their theories of social change (Ebrahim 2007, 195).

Because NGOs hold IOs to account for their actions there are those who argue that we need to ensure that NGOs are accountable. There is less research on this question but Jordan (2007, 155) finds, as a result of an informal study of twelve national NGO associations, “that most NGOs address the issue of accountability only when the political space within which they operate is somehow threatened.”

In terms of to whom CSOs should be accountable to, Tallberg and Uhlin (2011, 15) posit that the relevant groups include all significantly affected stakeholders, understood in terms of its beneficiaries. If the CSO has formal memberships, then accountability must also extend its members. Another important constituency are those who fund the group. NGO accountability mechanisms can include a push for judicial access, for “fire-alarm” procedures that enable civil society actors to monitor state commitments, and for civil society involvement in policy evaluation (Tallberg and Uhlin 2011, 10). The problem with these, however, is that “these mechanisms are not necessarily used by civil society actors to the extent we could expect. Second, when they are used, privileged societal interests tend to be over-represented” (Tallberg and Uhlin 2011, 10). Accountability mechanisms can also include certification systems, rating systems, infrastructure and management capacity tools, and codes of conduct (Jordan 2007, 151); the problem, however, is that these mechanisms “do not reflect the value-base of NGO activities and can often seem to NGOs to be quite divorced from the mission of the organization”; because “they do not address the rights of NGOs to operate (for example, the right to associate freely)” (Jordan 2007, 151) then there is a concern that this way of discussing accountability cannot fully capture the goals and concerns of CSOs and NGOs.

One study of NGO accountability asked transnational NGOs: “To whom or what do you perceive your organization is accountable? What strategies or activities does your organization use to strengthen its accountability?” The finding was that “donors are by far the most often mentioned category identified by leaders of transnational NGOs (78.3%).” Only 48.0% of the leaders brought up their target populations or beneficiaries. The average number of constituents they felt accountable to was 3, and the highest number 8 (Raggo and Schmitz 2010, 16-17). In terms of reporting, Cooley and Ron (2002) “suggest that competition among NGOs for scarce contracting dollars gives them incentives to whitewash poorly performing projects and ignore encounters with government corruption” (cited in Winters 2010, 222). Accountability may be further obfuscated because NGOs have “two bottom
lines: mission effectiveness and financial sustainability” (Moore, 2000, 194; cited in Bryant 2007, 173). Partnerships also make accountability relations more complex because “different principals can hold partnerships accountable to different possibly conflicting standards”; moreover, it is also possible that because accountability becomes a shared project the task might be neglected altogether (Steets 2005, 8).

**CSOs’ Attempts to Hold IOs to Account**

Although NGO involvement with IOs is increasing, the impact of NGOs is moderate. As Scholte (2011, 25) notes: “it is important to consider the purposes that civil society monitoring and evaluation of global governance has served… on the whole reformist civil society monitoring that supports existing global governance has carried greater weight than transformist civil society scrutiny that challenges underlying structures of global order. To this extent evaluation activities through CSOs have, overall, tended to be part of a status quo that legitimates prevailing global governance arrangements.”

Calls for increased accountability by CSOs and NGOs take place in a particular context. As Woods notes:

> the legitimacy of most international institutions has been outpaced by an expansion in their mandates…international institutions are being expected to intervene in ways well beyond the dreams of their founders. The result is not just a problem of effectiveness but equally a problem of legitimacy. Most multilateral organizations still have the governance structures with which they were born. The result is a serious gap between what they are now attempting to do, and what they are perceived as having the legitimacy to do….The result is a wide-ranging debate about how to enhance the legitimacy and effectiveness of international organizations.” (Woods 2007, 31)

If this outpacing of mandates is true with the WTO, then it is something that needs addressing. At minimum, the issue needs to be discussed given the multiple conceptions of accountability and the impact that assumptions about accountability can have on a group’s legitimacy and authority in a global context.

Calls for accountability in global public institutions are likely to try to 1) improve vertical accountability by reforming representation, 2) improve horizontal accountability “through quasi-independent oversight mechanisms, separation of powers, ombudspersons, judicial review, and conflict management procedures,” and 3) establish new, more pluralistic, approaches to decision-making (Weisband and Ebrahim 2007, 8). Calls for increased accountability and transparency should also be placed in context in terms of people’s understandings of why CSOs/NGOs feel that they have to “push” IOs to release information. As Laan (2010) notes, the prevailing assumption is that “the WTO or member state are purposefully obfuscating their activities. This, however, is not always the case.” As Laan points out, another reason for a lack of transparency occurs when governments “do not know the full extent of subsidies offered in their jurisdiction” (Laan 2010, 8). The root of the obfuscation that critics object to may not be the fault or intent of IOs, but rather the result of complex networks of accountability. When this is the case clarifying them may be in the best interest of IOs, CSO, and NGOS.

The relationship between IOs and CSOs/NGOs is expanding in terms of opportunities for the latter to participate and to hold decision-makers accountable. The WTO is particularly receptive to CSOs/NGOs because it “provides largely equal and open access for civil society”; the problem, however, is that participation varies across CSOs, with a north-south divide that “is rather
strengthened than mitigated by civil society participation” (Piewitt 2010, 469). Although CSOs and NGOs may fare well in terms of formal inclusion, there is a concern about their effective inclusion. In this respect, one complaint is “the ritualistic quality of some purported ‘consultations’ of civil society”; the charge here is that meetings “appear to be carefully choreographed public relations exercises, with little substantive discussion of specific concerns” (Scholte 2011, 19). If this is the case then this raises the danger of co-optation and “there is a risk that ‘consultation’ of civil society can become an uncritical legitimation process for global governance” (Scholte 2011, 20).

These concerns, however, must be placed in context. In general, the response to increased NGO/CSO participation is positive. Criticism of the WTO by NGOs is “much more muted than 10 years ago, reflecting the various steps that have been taken to enhance transparency” (Hoekman 2011, 11). There are also acknowledgments that CSO/NGO involvement has “succeeded in bringing a significant and often under-estimated degree of democratic accountability to the global politics of climate change” (Newell 2008, 149; also see Dombrowski 2010, 411-412). NGO/CSO influence on policy outcomes, however, remains limited (Dombrowski 2010, 412). As Newell (2008, 147) notes, the challenge for NGOs/CSOs with their increased pressure on IOs “is to ensure accountability as spectacle becomes accountability as usual: a steady flow of pressures for reform rather than a media-fuelled flurry of scrutiny followed by a return to business as usual practices” (Newell 2008, 147).

Newell’s comments underscore the importance of evaluating the substance of accountability and legitimacy that CSOs/NGOs can draw from the WTO. There is a concern, as noted by Scholte (2011, 14), that “CSOs have done little to address issues of meaningful transparency, such as timely release of information, multilingual documentation, equitable Internet access, and ready public availability of global governance officials.” Provoking responses from IOs is not enough; the type of response is of particular importance. Addressing the question of justification, Kingsbury and Stewart (2008) note that procedures are better when they do more in the way of highlighting the justificatory aspects of accountability mechanisms. IOs need to do more than just report; to increase the value there should be “reasoned decisions for administrative action, including responses to arguments raised by the interested parties” that accompany the activity of reporting. Significantly they note that offering reasoned decisions “is often a crucial factor in rendering meaningful any accountability mechanisms” (Kingsbury and Stewart 2008, 8). Without clearly setting out what makes something “fair”—and why it is important that a system is constructed in a particular way (and for particular ends) and held accountable—then knowing that an organization adheres to accountability does not necessarily give us sufficient information to offer a more comprehensive evaluation of the organization.

This call for justification highlights two important aspects of the accountability relationship between IOs and CSOs/NGOs. First, there is an implicit expectation that NGOs/CSOs will be able to use the information that comes out of IOs, respond to it, and that “the ultimate touchstone of accountability would be the responsiveness of institutions to criticism received” (Steffek 2010, 60-61). Second, in order for this exchange to be substantive, it is important that there is an awareness of the standards underlying calls for accountability and transparency. As Fisher (2010, 74) notes, “before holding a decision maker to account a decision must be made about what is the standard that a decision maker will be held to i.e. what is a “good” decision.” This brings us back to the polycentric problem. There is ambiguity in terms of what makes a decision good: is it the procedural rules set out, or is it the substance of the decision (measured against another principle)? And, related to this, what do we do if two “good” decisions are proposed? Accountability and legitimacy cannot be properly examined without an awareness of these underlying issues.
3. The Future of CSO Involvement

Given the above complexities, what should NGOs’ and the WTOs’ long-term and short-term goals be? Several suggestions have been made. These include:

1) Institutional reforms such as global regulatory agencies that: “allocate more funds for relations with CSOs; develop larger and better maintained databases of relevant CSOs; raise the number, quality and seniority of specialist staff for CSO liaison; give officials greater guidance and training on relations with CSOs; offer staff clearer and more substantial incentives to engage with civil society; provide a stronger lead from management to promote relations with CSOs; and cultivate positive institutional attitudes towards civil society” (Scholte 2010, 4).

2) Other helpful steps include:
   • greater priority on the part of CSOs to issues of global governance
   • more, and more reliable, funding of CSO programmes on global governance
   • expansion of CSO staff expertise to engage global regulatory apparatuses
   • fuller development of CSO coalitions on global governance matters
   • a more formalised coordination of CSO engagement of global regulatory agencies
   • greater attention by CSOs to their own accountabilities in global politics” (Scholte 2011, 46).

3) Increasing the legitimacy of the WTO negotiations by having more direct and formal involvement of national parliaments in the deliberations of the WTO. One proposal calls for the creation of a “WTO Parliament” with representatives from all Member States (Bellmann and Gerster, 1996, cited in Hoekman 2011, 11).

4) Greater NGO involvement in the WTO. Four arguments in favour of this are:
   i) To enhance the WTO decision-making process because NGOs will provide information, arguments, and perspectives that governments do not bring forward.
   ii) To increase the legitimacy of the WTO.
   iii) To enable the WTO to hear about important transnational issues that are not adequately represented by any national government.
   iv) To compensate for the fact that NGOs are not always heard at the national level in every country. (Van den Bossche 2008, 720)

5) Addressing concerns that increased NGO involvement in the WTO might:
   a. Lead the decision-making process to be captured by special interests.
   b. Be problematic when NGO are not accountable to an electorate nor representative in a general way.
   c. Pose a particular problem to developing countries because they do not have the organization and finances to make proper use of it.
   d. Make negotiations and decision making even more difficult because of the consensus requirement in WTO forums (Van den Bossche 2008, 721).


