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ARTICLE

The Accountability Gap in Multilateral Environmental Agreements: Challenges and Future Pathways

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Abstract
The institutional arrangements of multilateral environmental agreements (MEAs), notably those organized around conferences of the parties, have given rise to increasingly powerful and autonomous actors in global environmental governance. The expanding authority of these actors has outpaced the development of robust accountability mechanisms, allowing decisions that exceed mandates or undermine other regimes, often without oversight or redress. This accountability gap poses a structural risk to the legitimacy and effectiveness of global environmental efforts. We examine two potential pathways for closing this gap: (i) the Articles on the Responsibility of International Organizations, which offer a legal framework for institutional responsibility, and (ii) public accountability mechanisms that promote transparency, contestation, and learning. Each approach has limitations when applied in isolation, but their principles, if adapted to and developed for the specific institutional contexts of MEAs, could jointly inform a more coherent and layered framework of accountability. We propose institutional and policy reforms that link the legal recognition of institutional responsibilities under MEAs with embedded oversight and review mechanisms, laying the groundwork for more credible, responsive, and just global environmental governance.

Keywords: Accountability; International responsibility; Multilateral environmental agreements; Conferences of the parties; International organizations

1. Introduction

Institutional arrangements established under multilateral environmental agreements (MEAs) correspond to the constellation of core organs and bodies through which treaty functions are exercised. They typically comprise a governing body that serves as the leading decision-making authority, a standing secretariat that prepares and translates decisions into operational guidance, and specialized bodies that furnish expertise and monitor progress.[1] Most commonly, institutional arrangements are

[1] G. Ulfstein, 'Treaty Bodies', in D. Bodansky, J. Brunnée & E. Hey (eds), *The Oxford Handbook of International Environmental Law* (Oxford University Press, 1st edn, 2008), pp. 877–88; V. Röben,

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centred on a conference of the parties (COP)[2] with a dedicated secretariat,[3] as under the United Nations Framework Convention on Climate Change (UNFCCC).[4] Others operate within standing international organizations, where treaty functions are carried out through the organization's own organs and committees, exemplified by the International Convention for the Prevention of Pollution from Ships (MARPOL)[5] within the International Maritime Organization, or the International Whaling Commission (IWC) under the International Convention for the Regulation of Whaling (ICRW).[6] Despite their varying degrees of institutionalization, both COP-driven and international organization-based arrangements have become central actors in global environmental governance, setting norms, steering resources, and influencing state behaviour in ways that shape the direction and ambition of the global response to escalating environmental crises.

Yet, the powers of institutional arrangements of MEAs have expanded without the concurrent development of essential mechanisms for oversight, contestation, or remedy. States and civil society actors lack clear avenues to question decisions that deviate from treaty mandates, contest inaction that undermines environmental protection, or seek redress when governance failures cause harm. When the COP to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)[7] authorized ivory stockpile sales, conservation advocates had no formal recourse to challenge the decisions that have widely been seen as fuelling elephant poaching and illicit trade.[8] When the Clean Development Mechanism, established under the Kyoto Protocol to the UNFCCC,[9] collapsed following prolonged uncertainty and inaction by the UNFCCC COP serving as the Meeting of the Parties (CMP), private economic actors that had invested in certified emissions reductions faced significant losses with no institutional means of redress.[10] Similarly,

'Institutional Developments under Modern International Environmental Agreements' (2000) 4 *Max Planck Yearbook of United Nations Law*, pp. 363–443.

2 The leading decision-making body of a treaty regime is not always styled as a COP; depending on the instrument, it may be termed a meeting of the parties, or take other forms. We use the term 'COP' to refer to the entire category of these bodies, unless otherwise specified.

3 A comprehensive study is provided by R.R. Churchill & G. Ulfstein, 'Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law' (2000) 94(4) *American Journal of International Law*, pp. 623–59.

4 New York, NY (United States (US)), 9 May 1992, in force 21 Mar. 1994, available at: https://unfccc.int.

5 London (United Kingdom), 2 Nov. 1973, in force 2 Oct. 1983, available at: https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx.

6 Washington, DC (US), 2 Dec. 1946, in force 10 Nov. 1948, available at: https://iwc.int/convention.

7 Washington, DC (US), 3 Mar. 1973, in force 1 July 1975, available at: https://cites.org.

8 A.M. Lemieux & R.V. Clarke, 'The International Ban on Ivory Sales and its Effects on Elephant Poaching in Africa' (2009) 49(4) *The British Journal of Criminology*, pp. 451–71.

9 Kyoto (Japan), 11 Dec. 1997, in force 16 Feb. 2005, available at: https://unfccc.int/kyoto_protocol.

10 B. Pearson, 'Market Failure: Why the Clean Development Mechanism Won't Promote Clean Development' (2007) 15(2) *Journal of Cleaner Production*, pp. 247–52; R. Spalding-Fecher et al., 'Assessing the Impact of the Clean Development Mechanism', *CDM Policy Dialogue*, 15 July 2012, available at: https://carbonmarketwatch.org/wp-content/uploads/2012/11/1030_impact.pdf.

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when the COP to the Convention on Biological Diversity (CBD)[11] accelerated protected-area targets,[12] Indigenous communities displaced from ancestral lands had no independent forum to hear their claims.[13] These cases underscore a striking accountability gap in global environmental governance; one that allows MEA decisions to contravene treaty mandates, fosters inertia in the face of urgent environmental risks, and shifts burdens onto those with a legitimate stake in environmental outcomes, yet, who are least able to resist.[14] This accountability gap not only undermines the legitimacy of decision-making under MEAs, but also jeopardizes the effectiveness of global sustainability efforts.

In this article we investigate how the accountability gap in MEAs might be addressed by exploring two potential and complementary pathways: (i) international legal responsibility, as articulated in the 2011 Articles on the Responsibility of International Organizations (ARIO)[15] developed by the International Law Commission (ILC); and (ii) institutional accountability mechanisms grounded in principles of good governance.[16] The ARIO provide the principal legal framework for addressing internationally wrongful acts committed by international organizations, aiming to facilitate norm enforcement and enable redress. However, the potential reach of this framework in the context of MEAs remains constrained by unresolved questions about the legal status of COP-driven institutional arrangements, its generic treatment of diverse institutional forms, and its neglect of accountability in relation to non-state and affected actors. Accountability mechanisms, by contrast, offer more flexible and participatory tools for scrutiny, transparency, and institutional learning, but often lack binding authority and consistency across regimes. We examine both pathways to clarify their respective potential and limits, and identify the legal and institutional developments required to strengthen accountability in MEA governance. Our analysis advances a foundation for rethinking how institutional authority under MEAs can be exercised with greater contestability and responsiveness to environmental and societal considerations.

The analysis is structured as follows. Section 2 conceptualizes the accountability gap in MEAs and situates it within broader debates on institutional authority and

[11] Rio de Janeiro (Brazil), 5 June 1992, in force 29 Dec. 1993, available at: https://www.cbd.int.

[12] E.g., under the 2022 Kunming-Montreal Global Biodiversity Framework, protected areas and other effective area-based conservation measures should cover at least 30% of the planet by 2030: United Nations Environment Programme (UNEP), CBD COP, Decision 15/4, 'Kunming-Montreal Global Biodiversity Framework' 19 Dec. 2022, UN Doc. CBD/COP/DEC/15/4.

[13] A. Kabra, 'Dilemmas of Conservation Displacement from Protected Areas', in M.M. Cernea & J.K. Maldonado (eds), *Challenging the Prevailing Paradigm of Displacement and Resettlement: Risks, Impoverishment, Legacies, Solutions* (Routledge, 2018), pp. 117–40.

[14] R.E. Kim & H. van Asselt, 'Global Governance: Problem Shifting in the Anthropocene and the Limits of International Law', in E. Morgera & K. Kulovesi (eds), *Research Handbook on International Law and Natural Resources* (Edward Elgar, 2016), pp. 473–95.

[15] International Law Commission (ILC), 'Draft Articles on the Responsibility of International Organizations, with Commentaries' (2011) *Yearbook of the International Law Commission*, Vol. II, Part Two (ARIO and ARIO Commentary).

[16] N. Woods, 'Good Governance in International Organizations' (1999) 5(1) *Global Governance*, pp. 39–61; N. Woods, 'Holding Intergovernmental Institutions to Account' (2003) 17(1) *Ethics & International Affairs*, pp. 69–80.

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legitimacy. Section 3 examines the applicability of the ARIO in addressing this gap, identifying avenues for further development and clarification of their rules. Section 4 turns to institutional accountability mechanisms and advances a framework in relation to how institutional arrangements under MEAs can embed scrutiny and self-correction processes within their operations.

2. Delimiting the Accountability Gap

Understanding the accountability gap in MEAs requires a precise conceptualization of how accountability operates in the context of international institutions. Accountability is both a normative ideal and a relational practice.[17] Normatively, it embodies the expectation that institutions exercise their authority in accordance with legal norms or broader standards of good governance, including transparency, participation, responsiveness, and equity.[18] These principles establish accountability as a critical safeguard for the legitimacy of international institutions, especially as they increasingly exercise public authority across borders.[19]

At the same time, accountability must be understood relationally, as an ongoing interaction between institutions and those affected by their decisions.[20] Accountability relationships emerge when institutions wield authority that shapes the interests, rights, or environments of others, hence creating obligations to explain and justify their conduct to those affected.[21] Traditionally, member states, acting as formal principals that delegate authority and provide funding to international institutions, have been the primary claimants of accountability.[22] However, accountability relationships have expanded beyond this state-centric model. Indigenous and local communities, as well as private economic actors – such as companies, investors, and commodity producers whose environments, interests, and livelihoods are directly shaped by institutional action – are increasingly recognized, at least normatively, as legitimate claimants of accountability.[23] Civil society organizations and industry associations, representing

[17] M. Bovens, 'Two Concepts of Accountability: Accountability as a Virtue and as a Mechanism' (2010) 33(5) *West European Politics*, pp. 946–67.

[18] Woods (1999), n. 16 above; Woods (2003), n. 16 above.

[19] A. Reinisch, 'Securing the Accountability of International Organizations' (2001) 7(2) *Global Governance*, pp. 131–49.

[20] M. Bovens, 'Analysing and Assessing Accountability: A Conceptual Framework' (2007) 13(4) *European Law Journal*, pp. 447–68.

[21] K.E. Boon & F. Mégret, 'New Approaches to the Accountability of International Organizations' (2019) 16(1) *International Organizations Law Review*, pp. 1–10; R.O. Keohane, 'Accountability in World Politics' (2006) 29(2) *Scandinavian Political Studies*, pp. 75–87; R.W. Grant & R.O. Keohane, 'Accountability and Abuses of Power in World Politics' (2005) 99(1) *American Political Science Review*, pp. 29–43.

[22] S. Gailmard, 'Accountability and Principal-Agent Theory', in M. Bovens, R. Goodin & T. Schillemans (eds), *The Oxford Handbook of Public Accountability* (Oxford University Press, 2014), pp. 90–105.

[23] On the concept of accountability to those affected by institutional action, sometimes described as 'external accountability', see Keohane, n. 21 above; Grant & Keohane, n. 21 above; D. Held, *Global Covenant: The Social Democratic Alternative to the Washington Consensus* (Polity Press, 2004), pp. 25–7.

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broader public or sectoral interests and amplifying the voices of those less able to participate directly, also function as important intermediaries.[24]

In these relationships, institutions are expected – whether formally obligated or not – to explain and justify their conduct; relevant actors or forums evaluate these justifications and may challenge them; and consequences such as legal sanctions, funding suspension, institutional correction, and reputational constraints may follow when conduct deviates from agreed standards.[25] This relational understanding emphasizes that accountability depends on the presence of empowered actors, accessible forums, and mechanisms capable of scrutinizing institutional conduct and enforcing norms of correction or redress.

Accountability can be pursued through a variety of forums and mechanisms, ranging from institutional processes to legal responsibility frameworks.[26] While these options differ in formality, authority, and reach, each offers a way to scrutinize, justify, or contest institutional action. Institutional accountability mechanisms include review bodies, compliance and evaluation procedures, and participatory arenas, such as civil society engagement and public reporting. Legal responsibility constitutes a particularly formal mode of accountability, typically involving binding remedies determined by judicial bodies, such as courts or tribunals, or quasi-judicial bodies, such as treaty-based dispute mechanisms.[27] Clarifying the respective role and reach of these mechanisms is key to understanding how different institutional arrangements of MEAs might be held to account, and evaluating the strengths and limitations of each approach.

Despite abundant rhetoric in the literature and policy debates that promote the accountability of international institutions in global environmental governance,[28] clear pathways have not been established between the institutional arrangements of MEAs and potential claimants. In practice, existing oversight is narrow in scope and geared towards intergovernmental control rather than environmental integrity or public redress. Member states exercise oversight through budget approvals and voting rules, but these mechanisms are designed primarily to preserve institutional balance among parties and protect sovereign interests, not scrutinize outcomes or hold governing bodies accountable for their conduct.[29] Meanwhile, civil society and private

[24] Keohane, n. 21 above, pp. 83–4; Grant & Keohane, n. 21 above, p. 33; R. Mulgan, 'Accountability: An Ever-Expanding Concept?' (2000) 78(3) *Public Administration*, pp. 555–73, at 565–6.

[25] Grant & Keohane, n. 21 above, pp. 29, 35–37.

[26] Boon & Mégret, n. 21 above.

[27] Reinisch, n. 19 above, pp. 133–8; G. Hafner, 'Accountability of International Organizations' (2003) 97 *American Society of International Law Proceedings*, pp. 236–40.

[28] T. Kramarz & S. Park, 'Accountability in Global Environmental Governance: A Meaningful Tool for Action?' (2016) 16(2) *Global Environmental Politics*, pp. 1–21; R. Percival, 'Global Environmental Accountability: The Missing Link in the Pursuit of Sustainable Development?', in J.M. Gillroy & J. Bowersox (eds), *The Moral Austerity of Environmental Decision Making, Sustainability, Democracy, and Normative Argument in Policy and Law* (Duke University Press, 2002), pp. 194–206, at 194; A. Najam & M. Halle, 'Global Environmental Governance: The Challenge of Accountability', *Sustainable Development Insights*, May 2010, available at: https://www.bu.edu/pardee/files/2010/04/UNsdkp005fsingle.pdf.

[29] On the supervisory role of states in international institutions see Grant & Keohane, n. 21 above.

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sector participants are typically confined to observer roles, and are thereby excluded from formal decision-making processes.[30] As a result, their attempts to engage often encounter opaque procedures, selective transparency, and fragmented access points.

Bridging the accountability gap in MEAs, therefore, requires mechanisms that grant standing, ensure access to review, and provide remedies when policies and decisions undermine environmental goals or infringe rights. Moreover, because MEAs differ in their institutional arrangements, mandates, and operational contexts, accountability mechanisms must be adaptable not only to institutional design, but also to how they guide, constrain or incentivize the behaviour of member states and other relevant actors, thereby shaping environmental or social outcomes in practice. The following sections examine two pathways – legal responsibility and institutional accountability mechanisms – and evaluate their respective potential to meet these challenges.

3. International Legal Responsibility

In this section we examine whether international legal responsibility can provide a viable framework to address the accountability gap in MEAs. The ARIO offer a structured basis for evaluating institutional conduct and articulating key principles of breach, attribution, and remedy. Although the ARIO do not yet reflect binding customary international law, they have gained traction as a progressive development and have served as a guiding instrument in disputes involving major international organizations such as the United Nations (UN)[31] and the World Trade Organization (WTO).[32] In response to the expanding authority of both COP-driven and international organization-based institutional arrangements of MEAs in facilitating intergovernmental cooperation, the ARIO hold potential as a reference framework for assessing their legal responsibility.

However, applying the ARIO to MEAs is far from straightforward. Their conceptual coherence and normative authority remain contested, and their utility in addressing accountability deficits is constrained by both procedural and doctrinal challenges.[33] The ARIO are geared primarily towards state–organization disputes, leaving other actors with little, if any, access to legal remedies.[34] Moreover, as a general framework based on a 'one-size-fits-all' approach, the ARIO do not readily

[30] J. Ebbesson, 'Public Participation', in L. Rajamani & J. Peel (eds), *The Oxford Handbook of International Environmental Law* (Oxford University Press, 2nd edn, 2021), pp. 351–67.

[31] See e.g., ECtHR, *Behrami and Behrami* v. *France* and *Saramati* v. *France, Germany and Norway*, Appl. Nos 71412/01 and 78166/01, Decision on Admissibility, 2 May 2007 (ECtHR, Grand Chamber) (*Behrami* and *Saramati*); *Mothers of Srebrenica* v. *The State of The Netherlands*, Judgment, 19 July 2019, ECLI:NL:HR:2019:122 (Supreme Court of the Netherlands).

[32] N. Gal-Or, 'Responsibility of the WTO for Breach of an International Obligation under the Draft Articles on Responsibility of International Organizations' (2012) 50 *Canadian Yearbook of International Law*, pp. 197–242.

[33] J. d'Aspremont, 'The Articles on the Responsibility of International Organizations: Magnifying the Fissures in the Law of International Responsibility' (2012) 9(1) *International Organizations Law Review*, pp. 15–28.

[34] Boon & Mégret, n. 21 above, p. 7.

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capture the institutional diversity of global governance, leaving gaps when it comes to entities such as COP-driven institutional arrangements.[35]

In addition to these procedural challenges, applying the ARIO to the institutional arrangements under MEAs raises two threshold legal questions. Firstly, under Article 3 ARIO, the framework applies only to organizations that possess international legal personality. This criterion is clearly met in the case of institutional arrangements that are based within international organizations.[36] Yet, this applicability does not automatically extend to COP-driven institutional arrangements, the status of which has so far remained unclear under international law. The first step, therefore, is to determine whether these arrangements meet the criteria for international legal personality necessary to trigger the ARIO mechanisms.

Secondly, under Article 4, legal responsibility requires an internationally wrongful act constituting a breach of an international obligation, which is attributable to the organization in question. This requires clarification of which obligations apply to institutional arrangements of MEAs, the conditions under which conduct can be properly attributed to them, and whether, in practice, the ARIO can offer a viable route for redress to those affected. We address each of these questions below.

3.1. Do COP-Driven Institutional Arrangements Have International Legal Personality?

Before the ARIO framework can apply, a potential bearer of responsibility (that is, an international organization with legal personality) must first be identified. Under most MEAs, including major ones with near-universal membership, institutional arrangements are COP-driven. These entities deliberate, decide, and guide the implementation of collective policy, yet their legal personality has never been formally recognized.[37] The key question, therefore, is whether COP-driven institutional arrangements under MEAs – as a collection of the COP, its secretariat, and subsidiary bodies – can be

[35] See, notably, ILC, 'Responsibility of International Organizations: Comments and Observations Received from International Organizations', 14 Feb. 2011, UN Doc. A/CN.4/637, p. 138; E. Paasivirta & P.J. Kuijper, 'Does One Size Fit All? The European Community and the Responsibility of International Organizations' (2005) 36 *Netherlands Yearbook of International Law*, pp. 169–226; K.E. Boon, 'New Directions in Responsibility: Assessing the International Law Commission's Draft Articles on the Responsibility of International Organizations' (2011) 37 *The Yale Journal of International Law Online*, pp. 1–10, at 8; J. Klabbers, 'Responsibility of International Organizations: Essays in Memory of Sir Ian Brownlie, *edited by* Maurizio Ragazzi' (2015) 12(1) *International Organizations Law Review*, pp. 279–83, at 280; J. Wouters & J. Odermatt, 'Are All International Organizations Created Equal?' (2012) 9(1) *International Organizations Law Review*, pp. 7–14.

[36] Churchill & Ulfstein, n. 3 above, pp. 627–31. See, e.g., the Commission for the Conservation of Antarctic Marine Living Resources established under the Convention on the Conservation of Antarctic Marine Living Resources, Canberra (Australia), 20 May 1980, in force 7 Apr. 1982, available at: https://www.ccamlr.org/en/organisation/camlr-convention-text, or the Food and Agriculture Organization of the United Nations (FAO) serving as the institutional arrangements of the International Plant Protection Convention, Rome (Italy), 6 Dec. 1951, in force 3 Apr. 1952, available at: https://www.ippc.int.

[37] J. Brunnée, 'COPing with Consent: Law-Making under Multilateral Environmental Agreements' (2002) 15(1) *Leiden Journal of International Law*, pp. 1–52, at 16; R.E. Kim & B. Mackey, 'International Environmental Law as a Complex Adaptive System' (2014) 14(1) *International Environmental Agreements: Politics, Law and Economics*, pp. 5–24; Churchill & Ulfstein, n. 3 above.

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regarded as possessing the attributes of an international organization with legal personality.

In international legal theory, particularly as developed in the aftermath of the *Reparation for Injuries* advisory opinion of the International Court of Justice (ICJ), the legal personality of an international organization is understood not as a matter of formal designation but as a functional consequence of institutional practice.[38] It arises where an entity displays distinct institutional will, meaning the capacity to formulate and express intentions separate from those of its members,[39] as well as functional capacity, denoting the legal and operational means to act on those intentions through norm-setting, decision-making, administration, and external relations.[40] An entity, therefore, may qualify as an international organization, even in the absence of the explicit conferral of personality, if it demonstrates the ability to shape and implement policy autonomously rather than simply executing the collective will of its members. Applying these criteria to the COP-driven institutional arrangements under MEAs requires a functional inquiry into whether, through accumulated authority and operational capacity, these entities exercise institutional agency or remain confined to implementing state consensus.

As originally conceived, COP-driven institutional arrangements were not intended to function as independent legal actors. Their early design reflected a preference for flexible, state-led diplomacy: they were designed as periodic forums for coordination and consensus-building, not as autonomous organizations capable of exercising authority. Accordingly, early scholarship often described COPs as 'informal institutional arrangements'[41] that are 'no more than a diplomatic conference of states',[42] lacking the independent personality required to incur responsibility under international law. Importantly, however, COP-driven institutional arrangements have evolved into governance structures that perform the core functions traditionally associated with international organizations, often with effects that cannot be fully explained as mere reflections of state instructions.[43]

[38] *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 11 Apr. 1949, *ICJ Reports* (1949), pp. 178–9 (*Reparation for Injuries*).

[39] J.D. Fry, 'Rights, Functions, and International Legal Personality of International Organizations' (2018) 36(2) *Boston University International Law Journal*, pp. 221–48; H.G. Schermers & N.M. Blokker, *International Institutional Law* (Brill Nijhoff, 7th edn, 2025), pp. 55–8.

[40] J. Klabbers, 'The Emergence of Functionalism in International Institutional Law: Colonial Inspirations' (2014) 25(3) *European Journal of International Law*, pp. 645–75; W.T. Worster, 'Relative International Legal Personality of Non-State Actors' (2015) 42(1) *Brooklyn Journal of International Law*, pp. 207–73; C. Brölmann, 'The International Court of Justice and International Organisations' (2007) 9(2) *International Community Law Review*, pp. 181–6.

[41] P. Klein & P. Sands, '(Re)Writing a Handbook on the Law of International Organizations: Options and Challenges' (2008) 5(1) *International Organizations Law Review*, pp. 215–22, at 220.

[42] A.E. Boyle, 'Saving the World? Implementation and Enforcement of International Environmental Law through International Institutions' (1991) 3(2) *Journal of Environmental Law*, pp. 229–45, at 235.

[43] Churchill & Ulfstein, n. 3 above; Röben, n. 1 above, p. 437; Ulfstein, n. 1 above, p. 878; Brunnée, n. 37 above, p. 16; A. Wiersema, 'The New International Law-Makers? Conferences of the Parties to Multilateral Environmental Agreements' (2009) 31(1) *Michigan Journal of International Law*, pp. 231–87.

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Multiple examples from practice illustrate this transformation. Under the UNFCCC, the COP established the Green Climate Fund in 2010,[44] and continues to steer its strategic direction through decisions on investment priorities and safeguards. The Fund's operation as a legally distinct institution, nonetheless shaped by COP mandates, demonstrates how COPs exercise delegated authority with independent institutional effect.[45] Similarly, Article 47(7) of the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction (BBNJ)[46] authorizes its COP to request advisory opinions from the International Tribunal for the Law of the Sea (ITLOS) on legal questions arising within the scope of the Agreement. This is the first time that a COP has expressly been empowered to engage an international judicial body in its own right, marking an unprecedented step towards recognizing COPs as autonomous actors within the international legal order.

Secretariats, as integral components of COP-driven institutional arrangements, play a key role in cultivating both distinct will and functional capacity. They frame agendas, shape negotiation dynamics, and manage the flow of scientific and political information that underpins decision-making.[47] In the lead-up to the adoption of the 2019 Plastic Waste Amendments[48] at the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention)[49] COP14, the joint Secretariat of the Basel Convention, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam PIC Convention),[50] and the Stockholm Convention on Persistent Organic Pollutants (Stockholm POPs Convention)[51] (collectively, the BRS Secretariat) laid the groundwork for the amendments by commissioning technical studies, convening informal consultations, and building political momentum among key stakeholders.[52] When consensus could not be reached during negotiations, the BRS Secretariat helped to prepare the procedural basis for invoking majority voting, a rarely used but legally valid

[44] UNFCCC COP, Decision 1/CP.16, 'The Cancun Agreements: Outcome of the Work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention', 15 Mar. 2011, UN Doc. FCCC/CP/2010/7/Add.1, para. 102.

[45] M. Bowman & S. Minas, 'Resilience Through Interlinkage: The Green Climate Fund and Climate Finance Governance' (2019) 19(3) *Climate Policy*, pp. 342–53.

[46] New York, NY (US), 19 June 2023, in force 17 Jan. 2026, available at: https://www.un.org/bbnjagreement.

[47] S. Jinnah, *Post-Treaty Politics: Secretariat Influence in Global Environmental Governance* (The MIT Press, 2014).

[48] Basel Convention COP, Decision BC-14/12, 'Amendments to Annexes II, VIII and IX to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal', 10 May 2019, in force 1 Jan. 2021, UN Doc. UNEP/CHW/COP.14/BC-14/12.

[49] Basel (Switzerland), 22 Mar. 1989, in force 5 May 1992, available at: https://www.basel.int.

[50] Rotterdam (The Netherlands), 10 Sept. 1998, in force 24 Feb. 2004, available at: https://www.pic.int.

[51] Stockholm (Sweden), 22 May 2001, in force 17 May 2004, available at: https://www.pops.int.

[52] International Institute for Sustainable Development (IISD), 'Summary of the 2019 Meetings of the Conferences of the Parties to the Basel, Rotterdam and Stockholm Conventions: 29 April–10 May 2019' (2019) 15(269) *Earth Negotiations Bulletin*, pp. 1, 13, available at: https://enb.iisd.org/events/2019-meetings-conferences-parties-basel-rotterdam-and-stockholm-conventions/summary-report.

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mechanism under the rules of procedure of the Basel Convention.[53] The resulting decision, adopted over objections, signalled that the institutional apparatus was not constrained by political inertia and could assert its authority in the pursuit of regime objectives.

These examples indicate that although COP-driven institutional arrangements are not formally recognized by states as *de jure* international organizations under existing legal frameworks, they increasingly operate in ways that justify a functional recognition of international legal personality. Scholars have thus begun to conceptualize these entities as *bona fide* or quasi-international organizations: not formally constituted with explicit personality, but functionally indistinguishable, in practice, from international organizations in their independent capacity to produce legal and political effects across borders.[54] While these entities may lack the centralized structures of traditional international organizations[55] – for instance, in cases where they rely on rotating COP presidencies – their standing secretariats, established bureaucratic processes, and accumulated institutional memory often display equivalent attributes.[56]

Recognizing the international legal personality of COP-driven institutional arrangements of MEAs is, at minimum, a plausible interpretation of their evolving operations, and it is not inconceivable that future treaty practice or other legal developments will expressly endow these entities with legal personality. Without prejudging the current state of law, the following analysis therefore proceeds on a limited working assumption that these entities could qualify as international organizations. This working assumption serves an exploratory purpose: it enables a forward-looking engagement with the ARIO framework and allows us to assess whether, if such recognition were to materialize, the ARIO would adequately address the concerns identified or whether residual gaps would remain.

3.2. What Constitutes a Legal Obligation of the Institutional Arrangements of MEAs?

A direct consequence of international legal personality is the acquisition of legal obligations, the breach of which provides a basis for responsibility.[57] According to the ILC, the obligations of international organizations originate not only from the formal sources of international law listed in Article 38 of the ICJ Statute[58] – namely, treaties,

[53] Ibid., pp. 13, 22. While consensus-based voting remains the norm at COPs, several MEAs allow two-thirds majority voting, typically as a fallback if consensus cannot be reached. Notable examples include the CBD, n. 11 above, Art. 23(3), and CITES, n. 7 above, Art. XI(3). See also Brunnée, n. 37 above.

[54] Churchill & Ulfstein, n. 3 above, p. 649; Klein & Sands, n. 41 above, p. 220; G. Fernández Arribas, 'Rethinking International Institutionalisation Through Treaty Organs' (2020) 17(2) *International Organizations Law Review*, pp. 457–83, at 459.

[55] On the physical aspects of international organizations see B. Reinalda, *Routledge History of International Organizations: From 1815 to the Present Day* (Routledge, 2009), p. 5.

[56] Röben, n. 1 above, p. 437; Brunnée, n. 37 above, p. 16; Ulfstein, n. 1 above, p. 878.

[57] *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, Advisory Opinion, 20 Dec. 1980, *ICJ Reports* (1980), pp. 73, 89–90 (*WHO-Egypt*).

[58] San Francisco, CA (US), 26 June 1945, in force 24 Oct. 1945, available at: https://www.icj-cij.org/en/statute.

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customary norms, and general principles – but also from the internal legal order of the organization itself.[59] In the MEA context, this raises the question of what, precisely, constitutes a legal obligation of their institutional arrangements – whether centred on a COP or embedded within a standing international organization. Are their duties, mandates, and decisions primarily functional and political, or can they be understood as sources of legal obligation, breach of which may engage their responsibility?

Below, we examine four potential sources of obligations: (i) constituent instruments; (ii) the internal legal order; (iii) customary law and general principles of international law, as well as (iv) rights-based obligations – and consider the conditions under which non-compliance might constitute a breach.

Obligations arising from constituent instruments

A primary source of obligations of the institutional arrangements is their constitutive treaty or the MEA under which they operate.[60] These obligations may be expressly stated – such as duties to review implementation, adopt decisions to enhance effectiveness, and base decisions on scientific evidence – or they may be implied from the functions and objectives of the MEA. Both expressly stated and implied obligations derive their binding force from the treaty itself, as interpreted in the light of the Vienna Convention on the Law of Treaties (VCLT).[61] Although the VCLT formally governs the rights and duties of states, its interpretive rules, particularly Articles 26 and 31, indirectly constrain the conduct of treaty bodies.[62] Article 26 codifies *pacta sunt servanda*, requiring treaties to be performed in good faith, while Article 31 states that a treaty must be interpreted 'in the light of its object and purpose'.[63] While treaty objectives guide interpretation, international jurisprudence has not treated them as self-standing obligations capable of triggering responsibility. Courts have instead regarded objectives as interpretive aids rather than binding norms, thereby limiting responsibility to specific duties of conduct or result.[64] Accordingly, because the institutional arrangements of MEAs act under delegated authority, they can be understood as bound by a derivative duty of good-faith performance, requiring them to exercise powers consistently with the treaty's objectives and within the limits of their mandate. However, this derivative duty can extend only to conduct reasonably connected to delegated functions, established institutional practice, and the treaty's interpretive framework.[65]

[59] See Art. 10(2) ARIO and ARIO Commentary, n. 15 above, p. 63.

[60] If the institutional arrangements are based in an international organization established prior to the conclusion of the MEA, both its constitutive treaty and the MEA are important to consider.

[61] Vienna (Austria), 23 May 1969, in force 27 Jan. 1980, available at: https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf; M.E. Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (Martinus Nijhoff, 2009), pp. 359–68, 413–41.

[62] J.E. Alvarez, *International Organizations as Law-Makers* (Oxford University Press, 2005), pp. 65–108.

[63] Villiger, n. 61 above, pp. 367, 425–30.

[64] E.g., in *Whaling in the Antarctic*, the ICJ interpreted the object and purpose of the ICRW (n. 6 above) to clarify the scope of Japan's obligations but did not treat the Convention's objectives themselves as binding: *Whaling in the Antarctic (Australia* v. *Japan: New Zealand Intervening)*, Judgment, 31 Mar. 2014, *ICJ Reports* (2014), pp. 254–7, paras 67–83.

[65] C. McLachlan, 'The Principle of Systemic Integration and Article 31(3)(c) of the Vienna Convention' (2005) 54(2) *International and Comparative Law Quarterly*, pp. 279–320.

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Under the ARIO, breaches may arise from actions that contravene an international obligation or omissions, resulting from the failure to act despite a legal duty to do so.[66] The CITES COP offers an example of a potential breach by action. Under Article XI(2) CITES,[67] the COP is mandated to recommend measures for the Convention's effective implementation. Yet, its decisions to authorize one-off sales of government-held ivory stockpiles, though framed as tightly controlled exceptions, were widely regarded by conservation experts and civil society organizations as foreseeably likely to confuse markets and facilitate a resurgence in illegal poaching.[68] An argument can therefore be made that the COP acted inconsistently both with its procedural duty to promote the effective operation of the Convention and its overarching object and purpose of preventing trade that threatens species' survival. This illustrates how institutional discretion can, in practice, generate outcomes that are inconsistent with an MEA's object and purpose.

Conversely, the IWC illustrates how breaches may result from omission. Under Article V(2) ICRW,[69] the IWC is required to adopt regulations 'to provide for the conservation, development, and optimum utilization of whale resources', which implies a duty to review, deliberate, and, where appropriate, adapt regulatory measures on the basis of scientific evidence. Yet, the IWC has maintained its 1982 moratorium on commercial whaling for more than four decades, despite repeated findings by its Scientific Committee that several whale populations have recovered to levels that could sustain limited harvests.[70] The IWC has not only declined to act on this advice, but has also failed to initiate discussions on revising the ICRW to reflect its elevated conservation practices. This inaction risks inconsistency with the IWC's implied procedural duties under Article V(2) and with the objective and purpose of the Convention itself.

However, not all treaty provisions can create legally circumscribed obligations. For example, Article 16(4) of the Paris Agreement[71] provides that the COP serving as the Meeting of the Parties to the Agreement (CMA) 'shall' review implementation and adopt decisions to promote its effective implementation. While this provision employs prescriptive language to establish a procedural obligation binding on the CMA, the content and ambition of its operations are left largely to its discretion.[72] The Paris

[66] J. Klabbers, 'Reflections on Role Responsibility: The Responsibility of International Organizations for Failing to Act' (2017) 28(4) *European Journal of International Law*, pp. 1133–61.

[67] N. 7 above.

[68] See, e.g., CITES COP, Decision 10.1, 'Conditions for the Resumption of Trade in African Elephant Ivory from Populations Transferred to Appendix II at the 10th Meeting of the Conference of the Parties', 20 June 1997, available at: https://cites.org/sites/default/files/eng/cop/10/E10-Decisions.pdf; CITES COP, Decision 14.77, 'Elephant Conservation', 15 June 2007, available at: https://cites.org/sites/default/files/eng/dec/valid14/E14-Dec.pdf. See also Lemieux & Clarke, n. 8 above.

[69] N. 6 above.

[70] L. Kobayashi, 'Lifting the International Whaling Commission's Moratorium on Commercial Whaling as the Most Effective Global Regulation of Whaling' (2005) 29(2) *Environs: Environmental Law and Policy Journal*, pp. 177–220.

[71] Paris (France), 12 Dec. 2015, in force 4 Nov. 2016, available at: https://unfccc.int/paris_agreement/items/9485.php.

[72] B. Mayer, 'Obligations of Conduct in the International Law on Climate Change: A Defence' (2018) 27(2) *Review of European, Comparative & International Environmental Law*, pp. 130–40. On the

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Agreement neither defines 'effective implementation' nor links CMA outputs directly to achieving the 1.5°C temperature goal articulated in Article 2(1)(a). Accordingly, while the persistent failure of the CMA to meet its climate goals may undermine the effectiveness of global climate action, it may not necessarily constitute a breach of Article 16(4).[73] In such contexts, the boundary between legal obligation and political discretion becomes blurred, and the threshold for responsibility correspondingly high.

In contrast, the Basel Convention illustrates how consistent institutional practice can transform broad mandates into concrete procedural obligations.[74] Article 15(5) of the Basel Convention tasks the COP with taking 'necessary measures to achieve the aims of the Convention',[75] a provision that was initially facilitative rather than binding. Over time, however, the COP's sustained practice of adopting and periodically updating technical guidelines on hazardous wastes has given this mandate a more precise procedural character. Developed by expert bodies, adopted by consensus, and integrated into domestic regulatory frameworks, these technical guidelines have become a central mechanism for implementing the Convention.[76] In this context, a prolonged failure to revise them in the light of new scientific knowledge could plausibly constitute a breach of an evolving procedural obligation, particularly where such inaction frustrates the object and purpose of the Convention or leads to foreseeable harm.

Obligations arising from internal legal orders

The internal legal order of MEAs – comprising decisions, resolutions, and other normative acts adopted in accordance with established procedures – serves to interpret and give operational content to broad treaty commitments.[77] These acts define procedures, establish compliance mechanisms, and articulate standards, which guide both implementing states and the broader institutional arrangements. While such acts rarely possess explicit binding force,[78] they perform an indispensable interpretive and

identification of objectives through treaty language see R. Gardiner, *Treaty Interpretation* (Oxford University Press, 2nd edn, 2016), p. 194.

[73] See notably J.I. Allan, 'Dangerous Incrementalism of the Paris Agreement' (2019) 19(1) *Global Environmental Politics*, pp. 4–11; UNEP, *Emissions Gap Report 2023* (UNEP, 2023), available at: https://www.unep.org/resources/emissions-gap-report-2023.

[74] Consistent institutional practice may crystallize into a procedural obligation when it demonstrates sufficient consistency, duration, and acceptance among members to acquire normative significance within the institution's framework. See *Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter)*, Advisory Opinion, 20 July 1962, *ICJ Reports* (1962), pp. 157–9; *Reparation for Injuries*, n. 38 above, pp. 179–80; Schermers & Blokker, n. 39 above, pp. 937–41; Klabbers, n. 66 above, pp. 1143–50.

[75] N. 49 above.

[76] On the normative weight of the technical guidelines see E.R. van der Marel, 'Trading Plastic Waste in a Global Economy: Soundly Regulated by the Basel Convention?' (2022) 34(3) *Journal of Environmental Law*, pp. 477–97, at 490–2.

[77] P.-M. Dupuy & J.E. Viñuales, *International Environmental Law* (Cambridge University Press, 2nd edn, 2018), pp. 41–3.

[78] A classic example is Art. 2(9) of the Montreal Protocol, allowing the Meeting of the Parties to adopt binding adjustments to control measures without requiring ratification: Montreal Protocol on

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coordinative function within the regime.[79] Over time, collective and consistent reliance on these acts can imbue them with normative authority,[80] and where they impose duties for the institutional arrangements themselves, their disregard may trigger international responsibility under Article 2(b) ARIO.

The ICJ's 2025 *Obligations of States in Respect of Climate Change* advisory opinion is in support of the growing legal significance of such normative acts.[81] The ICJ confirmed that decisions of COPs and similar treaty bodies may constitute 'subsequent agreements' or 'subsequent practice' within the meaning of Article 31(3)(a)–(b) VCLT,[82] thereby forming part of the interpretative framework through which the treaty is understood.[83] At the same time, the ICJ emphasized that such acts derive their normative authority not from independent binding authority but from the collective consent, repetition, and consistent conduct of member states, which reinforce regularity and predictability within the regime.[84]

Accordingly, the legal weight of normative acts adopted under MEAs lies on a continuum between political guidance and interpretive normativity. While most decisions remain formally non-binding, their authoritative role in shaping treaty interpretation and operational practice means that a persistent or deliberate failure by the institutional arrangements to comply with their own decisions, particularly where such decisions operationalize procedural duties integral to the functioning of the regime, may potentially constitute a breach of obligations derived from their internal legal order. This highlights that even in the absence of formal amendment powers, the institutional arrangements can be responsible for upholding the normative structures they have themselves produced.

Obligations arising from customary norms and general principles of international law

Under the ARIO, international organizations may bear obligations arising from customary international law or general principles of international law in so far as these are compatible with their structure, functions, and powers.[85] The ILC Commentary remains deliberately non-committal as to which of these norms bind organizations, and many international organizations have been reluctant to acknowledge such

Substances that Deplete the Ozone Layer, Montreal (Canada), 16 Sept. 1987, in force 1 Jan. 1989, available at: https://ozone.unep.org/treaties/montreal-protocol.

79 T. Gehring, 'Treaty-Making and Treaty Evolution', in Bodansky, Brunnée & Hey, n. 1 above, pp. 467–97, at 481.

80 C. Ahlborn, 'The Rules of International Organizations and the Law of International Responsibility' (2011) 8(2) *International Organizations Law Review*, pp. 397–482; Brunnée, n. 37 above, p. 33; Gehring, n. 79 above; Röben, n. 1 above, p. 372; Wiersema, n. 43 above.

81 *Obligations of States in Respect of Climate Change*, Advisory Opinion, 23 July 2025, available at: https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf. See also M. Wewerinke-Singh, 'Harmonizing Sources, Hardening Duties Inside the ICJ's Advisory Opinion on Climate Change', *Verfassungsblog*, 11 Aug. 2025, available at: https://verfassungsblog.de/inside-the-icjs-advisory-opinion-on-climate-change.

82 N. 61 above.

83 *Obligations of States in Respect of Climate Change*, n. 81 above, p. 60, para. 177.

84 Ibid., p. 62, para. 184.

85 Art. 10 ARIO and Commentary, n. 15 above, pp. 54–6.

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obligations, invoking their constituent instruments as *lex specialis*.[86] Nonetheless, the prevailing scholarly view recognizes that customary norms and general principles operate at least residually, filling normative gaps and guiding institutional conduct.[87] The challenge, therefore, lies in translating these norms developed in a state-centric legal order into standards suited to institutions exercising delegated, coordinative, and epistemic powers.[88]

Within this framework, customary norms serve to identify the substantive duties relevant to institutional behaviour. In international environmental law, the core norm is the duty to prevent significant transboundary harm, affirmed in international jurisprudence as an obligation of conduct.[89] Its corollary standard of due diligence requires the exercise of all reasonable means to anticipate, avoid, and mitigate foreseeable harm, calibrated to the actor's capacity and mandate.[90] When transposed to the institutional sphere, this duty evolves into institutional due diligence or institutional reasonableness, demanding that international organizations use their procedural and coordinative capacities prudently and proportionately to identify and address foreseeable environmental risks within their mandates.[91]

General principles of international law, in turn, guide the interpretation and performance of such duties.[92] Principles such as reasonableness, proportionality, prudence, good faith, and cooperation form the normative grammar of institutional conduct, translating substantive norms into operational standards. Good faith, for instance, governs the exercise of delegated authority, requiring institutions to interpret

[86] K. Daugirdas & S. Schuricht, 'Breaking the Silence: Why International Organizations Should Acknowledge Customary International Law Obligations to Provide Effective Remedies' (2020) 3 *AIIB Yearbook of International Law*, pp. 54–87, at 60–1.

[87] Ibid., pp. 62–3; ARIO Commentary, n. 15 above, p. 94; Reinisch, n. 19 above; K. Schmalenbach, 'The Great Unknown: General Principles Governing the Law of International Organizations', in R. Lawson & R.A. Wessel (eds), *Unity in Diversity: Perspectives on the Law of International Organizations* (Brill, 2025), pp. 439–50.

[88] N. Blokker, 'International Organizations and Customary International Law: Is the International Law Commission Taking International Organizations Seriously?' (2017) 14(1) *International Organizations Law Review*, pp. 1–12.

[89] See notably *Corfu Channel (United Kingdom* v. *Albania)*, Judgment, 9 Apr. 1949, *ICJ Reports* (1949), p. 22; *Gabčíkovo-Nagymaros Project (Hungary* v. *Slovakia)*, Judgment, 25 Sept. 1997, *ICJ Reports* (1997), pp. 77–8, para. 140 (*Gabčíkovo-Nagymaros*); *Pulp Mills on the River Uruguay (Argentina* v. *Uruguay)*, Judgment, 20 Apr. 2010, *ICJ Reports* (2010), p. 77, para. 187.

[90] *Responsibilities and Obligations of States Sponsoring Persons and Entities with respect to Activities in the Area*, Advisory Opinion, 1 Feb. 2011, *ITLOS Reports* (2011), p. 41, paras 110–1. In the context of state responsibility, due diligence is among the standards for assessing potential breaches; see ILC, 'Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries' (2001) *Yearbook of the International Law Commission*, Vol. II, Part Two, p. 34.

[91] E. Campbell et al., 'Due Diligence Obligations of International Organizations under International Law' (2018) 50(2) *New York University Journal of International Law and Politics*, pp. 541–604; D. French & T. Stephens, 'ILA Study Group on Due Diligence in International Law: First Report', 7 Mar. 2014, p. 3, available at: https://www.ila-hq.org/en/documents/first-report-washington-dc-2014; J. Odermatt, 'The Development of Customary International Law by International Organizations' (2017) 66(2) *International and Comparative Law Quarterly*, pp. 491–511.

[92] ILC, 'General Principles of Law: Text of the Draft Conclusions Provisionally Adopted by the Drafting Committee on First Reading', 12 May 2023, UN Doc. A/CN.4/L.982; Schmalenbach, n. 87 above, pp. 441–2.

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and implement their mandates honestly, consistently, and without abuse of discretion.[93] Cooperation governs interinstitutional relations, obliging coordination with other regimes to avoid policy conflict and cumulative harm.[94] In the institutional context, their normative weight derives from sustained invocation and operationalization in practice, gradually crystallizing into standards of institutional accountability.[95]

The extension of customary norms and general principles of international law to both COP-driven and international organization-based institutional arrangements of MEAs is therefore not only plausible but also increasingly imperative. Recognizing that these entities bear duties of prevention, due diligence, good faith, and cooperation would provide a coherent normative basis for evaluating how they use their powers, especially where treaty provisions offer little guidance.

The experience of the Rio Conventions illustrates this need. Under the UNFCCC,[96] CBD,[97] and the UN Convention to Combat Desertification (UNCCD),[98] the treatment of bioenergy diverged sharply: bioenergy was thus viewed as a mitigation measure under the UNFCCC,[99] a biodiversity threat under the CBD,[100] and a driver of land degradation under the UNCCD.[101] This fragmentation stems from the absence of shared interpretive standards governing institutional cooperation and foresight. The coordination initiatives undertaken through the Joint Liaison Group, and more recent collaborative efforts to enhance synergies among the conventions,[102] reflect a growing recognition that interregime cooperation constitutes part of each body's good faith and due diligence performance of its environmental mandate. Embedding these principles formally into their operational context would help to ensure that institutional decisions are guided not only by political consensus but also by consistent legal and ethical standards of responsibility.

Rights-based obligations

An increasingly critical question in relation to the legal responsibility of international organizations is whether they are bound by rights-based obligations, particularly

[93] *WHO-Egypt*, n. 57 above, pp. 95–6, paras 48–9; K. Daugirdas, 'How and Why International Law Binds International Organizations' (2016) 57(2) *Harvard International Law Journal*, pp. 325–82.

[94] Y. Liu, 'A Legal Analysis of the Interinstitutional Duty to Cooperate in International Water Law' (2024) 33(1) *Review of European, Comparative & International Environmental Law*, pp. 93–108.

[95] Campbell et al., n. 91 above, pp. 600–3; Schmalenbach, n. 87 above, pp. 441–2.

[96] N. 4 above.

[97] N. 11 above.

[98] Paris (France), 17 June 1994, in force 26 Dec. 1996, available at: https://www.unccd.int.

[99] See, e.g., Decision 1/CP.16, n. 44 above; UNFCCC Secretariat, 'Challenges and Opportunities for Mitigation in the Agricultural Sector', Technical Paper, 21 Nov. 2008, UN Doc. FCCC/TP/2008/8, p. 23, paras 91–3.

[100] See, e.g., M.M. Núñez-Regueiro, S.F. Siddiqui & R.J. Fletcher Jr, 'Effects of Bioenergy on Biodiversity Arising from Land-Use Change and Crop Type' (2021) 35(1) *Conservation Biology*, pp. 77–87.

[101] See, e.g., F. Kraxner et al., 'Global Bioenergy Scenarios: Future Forest Development, Land-Use Implications, and Trade-Offs' (2013) 57 *Biomass and Bioenergy*, pp. 86–96.

[102] See, e.g., UNFCCC COP, Decision 1/CP.27, 'Sharm el-Sheikh Implementation Plan', 17 Mar. 2023, UN Doc. FCCC/CP/2022/10/Add.1.

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where their decisions have direct implications for individuals and communities. Recent controversies – such as the outcome of UNFCCC COP29 in Baku (Azerbaijan), where the decision of the CMA to the Paris Agreement on climate finance drew criticism for neglecting climate-vulnerable communities – illustrate how institutional choices under MEAs can produce foreseeable effects on human welfare and equity.[103]

The ARIO provide only indirect guidance. The framework does not expressly recognize human, social, economic, or cultural rights obligations of international organizations; yet, their logic suggests their potential applicability where such obligations form part of the legal framework binding upon member states. Article 14 ARIO stipulates responsibility where an organization's conduct circumvents the obligations of its members, implying that states cannot evade human rights-related duties by acting through collective institutions.[104]

From this perspective, the institutional arrangements of MEAs established by states to exercise delegated public authority may reasonably be expected to act consistently with the core rights obligations their members continue to bear. While preambular references, such as the Paris Agreement's acknowledgement of the link between climate change and human rights, do not create autonomous duties, they embed rights considerations into the interpretive framework of institutional decision-making.[105] Greater clarity is therefore needed, both within the ARIO and in MEA practice, on how such rights-based norms constrain institutional conduct, ensuring that collective environmental governance aligns with the broader rights-based obligations of the international legal order.[106]

Whose conduct is attributable?

Under the ARIO, a breach of an international obligation must be attributable to the relevant organization to constitute an internationally wrongful act.[107] Attribution

[103] UNFCCC COP, Decision 1/CMA.6, 'New Collective Quantified Goal on Climate Finance', 24 Nov. 2024, UN Doc. FCCC/PA/CMA/2024/17/Add.1. See also Climate Action Network International, 'COP29: Betrayal in Baku: Developed Countries Fail People and Planet', 23 Nov. 2024, available at: https://climatenetwork.org/2024/11/23/cop29_betrayal_in_baku.

[104] This line of reasoning finds support in doctrine and international jurisprudence, e.g., Guideline 19 of the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (adopted 26 Jan. 1997, reprinted in (1998) 20(3) *Human Rights Quarterly*, pp. 691–704) affirms that '[t]he obligations of States to protect economic, social and cultural rights extend also to their participation in international organizations, where they act collectively'. Most recently, in its advisory opinion on the *Obligations of States in Respect of Climate Change* (n. 81 above, pp. 112–3, paras 387–93), the ICJ confirmed that states' duties to address climate change are integrally linked to the protection of fundamental human rights. See also *Reparation for Injuries*, n. 38 above, p. 179; Gailmard, n. 22 above; M. Faix, 'Are International Organisations Bound by International Human Rights Obligations?' (2015) 5 *Czech Yearbook of International Law*, pp. 267–90.

[105] S. Adelman, 'Human Rights in the Paris Agreement: Too Little, Too Late?' (2018) 7(1) *Transnational Environmental Law*, pp. 17–36; A. Boyle, 'Climate Change, the Paris Agreement and Human Rights' (2018) 67(4) *International and Comparative Law Quarterly*, pp. 759–77.

[106] See notably A. Boyle, 'Human Rights and the Environment: Where Next?' (2012) 23(3) *European Journal of International Law*, pp. 613–42; K. Bosselmann, *The Principle of Sustainability: Transforming Law and Governance* (Ashgate, 2008), pp. 111–44.

[107] See, generally, ARIO and ARIO Commentary, n. 15 above, Part 2, Ch. II.

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establishes a verifiable link between institutional behaviour and the breach, ensuring that responsibility rests on identifiable conduct.[108] In the MEA context, attribution of conduct can sometimes be straightforward: acts or omissions by governing bodies, secretariats, or other subsidiary bodies that directly breach an international obligation can be attributable to the entire institutional arrangement under Articles 6 and 7 ARIO.

Complexity arises, however, where the breach results not from an institutional act *per se*, but during a state's implementation of MEA decisions. The ARIO provide two pathways for member state conduct to be attributed to an international organization. Under Article 17, responsibility arises when a state acts in compliance with a binding decision of the organization. Under Article 15, attribution applies when the organization exercises effective direction or control in relation to the conduct in question.[109]

Neither pathway, however, captures the distributed agency characteristic of multilateral environmental governance, where decisions are adopted, by default, on the basis of consensus and move through successive layers of implementation. Even where MEA decisions can be understood to carry the normative authority required to trigger Article 17, they seldom compel specific conduct, as states typically retain a margin of discretion in implementation. Similarly, MEAs typically lack the operational command structures or enforcement capacity to exercise the coercive control envisioned in Article 15. Their influence typically lies in normative guidance and procedural incentives rather than direct command, complicating the causal link between institutional acts and state conduct, and leaving most outcomes formally attributable to states alone. This approach reflects a broader flaw in the ARIO: rooted in the logic of state responsibility, the framework struggles to accommodate the iterative, political, and often indirect ways in which international organizations guide state behaviour.[110]

An illustration is the sustained emphasis of the CBD COP on expanding protected areas as a core implementation strategy, defining specific quantitative targets,[111] linking them to indicators of compliance and access to multilateral financial support.[112] Although the guidance of the COP is formally non-binding, it creates

[108] F. Messineo, 'Attribution of Conduct', in A. Nollkaemper & I. Plakokefalos (eds), *Principles of Shared Responsibility in International Law* (Cambridge University Press, 2014), pp. 60–97, at 65.

[109] Ibid., pp. 65–6; ARIO Commentary, n. 15 above, p. 67. See also N. Nedeski & A. Nollkaemper, 'Responsibility of International Organizations "In Connection with Acts of States"' (2012) 9(1) *International Organizations Law Review*, pp. 33–52. On effective control see C. Ryngaert, 'Apportioning Responsibility between the UN and Member States in UN Peace-Support Operations: An Inquiry into the Application of the "Effective Control" Standard after Behrami' (2012) 45(1) *Israel Law Review*, pp. 151–78.

[110] C. Ahlborn, 'The Use of Analogies in Drafting the Articles on the Responsibility of International Organizations. An Appraisal of the "Copy-Paste Approach"' (2012) 9(1) *International Organizations Law Review*, pp. 53–66; D'Aspremont, n. 33 above.

[111] See, most recently, the 2022 Kunming-Montreal Global Biodiversity Framework, n. 12 above.

[112] As the financial mechanism of the CBD, the Global Environment Facility established the Global Biodiversity Framework Fund, prioritizing support for the expansion and effective management of protected areas under Target 3 of the Kunming-Montreal Global Biodiversity Framework, n. 12 above.

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strong normative expectations that influence national policy choices. In some cases, these processes have contributed to the displacement of Indigenous peoples and local communities without adequate consultation or redress.[113] While the immediate acts remain those of states, they are guided by the COP's normative authority and procedural incentives, which shape how obligations are interpreted and implemented. This demonstrates how institutional arrangements can direct state conduct not through coercive control but through embedded forms of authority and incentive structures, exposing the limits of the ARIO's strict attribution criteria.

These tensions have led scholars to advocate moving beyond the narrow control-and-command paradigm of attribution towards approaches that recognize shared or parallel responsibility among multiple actors. Article 48 ARIO provides an entry point by allowing concurrent responsibility of international organizations and states for a single internationally wrongful act.[114] Building on this logic, emerging scholarship has developed the notion of indirect responsibility, applicable where an organization's decisions or omissions foreseeably facilitate or enable wrongful conduct by others. Rather than implying direct attribution of conduct, these pluralistic and contributory models of responsibility situate organizations within networks of causation and influence, emphasizing their duty to anticipate and mitigate harmful consequences of collective action.[115] In this sense, the argument is not that the institutional arrangements of MEAs should be held responsible for all downstream state conduct, but that their role in shaping foreseeable outcomes justifies a more nuanced approach to attribution, one capable of clarifying how institutional influence may give rise to corresponding duties of care.

Can the ARIO provide effective remedies for those affected?

The final question is whether the remedial framework of the ARIO can provide effective means for redress for internationally wrongful acts arising from the operations of MEAs and, crucially, who may invoke such responsibility or access available remedies. The ARIO were conceived around a model of bilateral disputes, where an injured or interested party seeks redress from an international organization for breach of an obligation. Under this framework, it is primarily states that have standing, as set out in Articles 42 to 48 ARIO.[116] In principle, this could extend to a member state alleging that a COP-driven or international organization-based institutional arrangement under an MEA breaches an obligation owed to it – for instance, where the state is outvoted, dissents from a collective decision, or contests the

See GEF Council, 'Programming Directions for the Global Biodiversity Framework Fund', 29 June 2023, GEF/C.64/06/Rev.01, paras 16–18, available at: https://www.thegef.org/sites/default/files/documents/2023-08/GEF_C.64.06.Rev_.01_Programming_Directions_for_the_Global_Biodiversity_Framework_Fund.pdf.

[113] Kabra, n. 13 above.

[114] A. Nollkaemper & D. Jacobs, 'Shared Responsibility in International Law: A Conceptual Framework' (2013) 34(2) *Michigan Journal of International Law*, pp. 359–438.

[115] Messineo, n. 108 above; A. Nollkaemper et al., 'Guiding Principles on Shared Responsibility in International Law' (2020) 31(1) *European Journal of International Law*, pp. 15–72; J.D. Fry, 'Attribution of Responsibility', in Nollkemper & Plakokefalos (eds), n. 108 above, pp. 98–133, at 105.

[116] D'Aspremont, n. 33 above.

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institution's effectiveness. While member states may face political and procedural barriers in challenging decisions they previously endorsed, prior consent does not in itself preclude later legal objections, particularly where the implementation of such decisions produces unforeseen harm or conflicts with other treaty obligations.[117] In practice, however, such claims would be tenable only where the act is *ultra vires*, that is, beyond the organization's mandate or procedural rules, and causes specific legal injury to the claimant state.[118]

Beyond states, few actors have been recognized as having standing. Articles 42 and 43 ARIO allow for the invocation of responsibility by other international organizations, which could potentially apply in situations where the policies promoted under one MEA undermine the mandate or operations of another. Yet, no judicial or arbitral forum has established jurisdiction over such interinstitutional disputes: the ICJ's contentious competence is limited to states, and while ad hoc arbitration or review is theoretically possible, it has not been used in practice.[119] Local communities, civil society organizations, and private economic actors similarly lack *locus standi* before international courts, despite being among the most directly affected by environmental decisions. Although such actors may pursue claims before domestic courts, which may refer to the ARIO in their reasoning, institutional immunities and doctrines such as non-justiciability often prevent such claims from advancing.[120] Their recourse, at best, lies in the representation of their interests by states willing to espouse their claims.[121]

Regarding forms of reparation, Articles 34 to 37 ARIO mirror the classic scheme in state responsibility: restitution, compensation, and satisfaction. The remedy of monetary compensation, however, presupposes quantifiable harm and a solvent respondent, conditions rarely met in environmental contexts. MEAs typically have operational budgets with no dedicated contingency fund for compensation arising from wrongful acts, while harm to ecosystems is often diffuse and cumulative, making quantification and attribution difficult.[122] More promising are non-monetary forms of reparation, expressly recognized under Article 30, which include the withdrawal, suspension, or revision of a decision; institutional reform to prevent recurrence; or corrective measures to realign governance practice with treaty objectives.[123] Such

[117] Alvarez, n. 62 above.

[118] V. Orakhelashvili, 'Security Council Acts: Meaning and Standards of Review' (2007) 11 *Max Planck Yearbook of United Nations Law*, pp. 143–95.

[119] J. Klabbers, 'Transforming Institutions: Autonomous International Organisations in Institutional Theory' (2017) 6(2) *Cambridge International Law Journal*, pp. 105–21; L. Boisson de Chazournes, *Interactions between Regional and Universal Organizations: A Legal Perspective* (Brill Nijhoff, 2017).

[120] On the 'avoidance techniques' of domestic courts in disputes involving international organizations see A. Reinisch, *International Organizations Before National Courts* (Cambridge University Press, 2000), pp. 35–168.

[121] M.E. Keck & K. Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Cornell University Press, 1998), pp. 1–38.

[122] *Gabčíkovo-Nagymaros*, n. 89 above, pp. 77–8, para. 140; N. Craik, T. Davenport & R. Mackenzie, *Liability for Environmental Harm to the Global Commons* (Cambridge University Press, 2023), pp. 199–229.

[123] See Ahlborn, n. 110 above; P. d'Argent, 'Reparation, Cessation, Assurances and Guarantees of Non-Repetition', in Nollkaemper & Plakokefalos (eds), n. 108 above, pp. 208–50.

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remedies, though less discussed in literature and practice, align more closely with the preventive and restorative ethos of environmental law and may help to re-establish institutional legitimacy.

The preceding analysis has revealed both the promise and the limits of international legal responsibility as an accountability pathway in relation to the institutional arrangements under MEAs. While the ARIO framework provides a valuable normative baseline, primarily through the notion that international organizations should not be immune from responsibility and by helping to clarify the scope of their duties, the absence of clear procedures for identifying, contesting, or remedying wrongful institutional conduct limits its practical applicability. These limitations signal a pressing need to explore complementary and institutionally grounded approaches to accountability.

4. Institutional Accountability Mechanisms

Where the law of international responsibility proves to be too narrow to capture the complex and consensus-based operations under MEAs, institutional accountability mechanisms offer a necessary complement. Rather than requiring a formal finding of a wrongful act or the existence of legal personality, these mechanisms shift the focus to how institutions justify their decisions, engage with feedback, and adapt to evolving normative standards. Although they rarely provide legally enforceable remedies, they can nonetheless reshape behaviour through reputational pressure, institutional learning, and public scrutiny, reinforcing formal legal processes in a mutually supportive manner.[124]

Properly designed, institutional accountability mechanisms can translate the normative expectations of good governance into continuous, relational processes of oversight under MEAs.[125] Such mechanisms can reveal whether institutional guidance, implementation practices, and their cumulative effects align with the objectives and principles of an MEA, and how they interact with the norms and practices of other regimes. In doing so, they can operationalize norms and principles that can be challenging to uphold through legal responsibility (such as due diligence, cooperation, and good faith), as well as individual and collective rights, and address systemic challenges that legal responsibility alone cannot reach, such as policy gaps, interinstitutional conflicts, and diffuse or long-term harm.

Yet, institutional accountability mechanisms under MEAs remain largely underdeveloped. Advancing a clearer understanding of how such mechanisms could operate is therefore essential for strengthening oversight and legitimacy in environmental governance. Drawing on the broader literature on institutional accountability and comparable experiences from practice, we discuss four key features necessary in the context of MEAs: scrutiny of institutional conduct,

[124] Keohane, n. 21 above; Boon & Mégret, n. 21 above.
[125] Woods (1999), n. 16 above; Woods (2003), n. 16 above.

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independence and access to information, institutional learning, and access for affected stakeholders.

4.1. Scrutiny of Institutional Conduct

First and foremost, accountability mechanisms under MEAs require systematic attention to institutional conduct. Current modes of scrutiny under MEAs focus predominantly on state behaviour: whether national reports comply with guidelines, whether implementation obligations are met, or whether compliance committees can assist non-performing states.[126] What remains largely unexamined is the conduct of the COPs, secretariats, and relevant subsidiary bodies that interpret mandates, set priorities, and shape global policy.

Examples from multilateral financial institutions illustrate what this kind of scrutiny might involve. Many institutions, including the Green Climate Fund and the multilateral development banks, have established independent mechanisms that evaluate not only the performance of funded activities but also the decision-making conduct of their governing boards and management. The Independent Evaluation Unit of the Green Climate Fund, for instance, assesses the transparency and procedural integrity of Board decisions,[127] while the World Bank Inspection Panel reviews whether internal safeguards were followed in project approval and supervision. Although their findings are not legally binding, they have exposed procedural shortcomings, prompted policy revisions, and enhanced transparency.[128] These experiences illustrate how international institutions can be held to account for the integrity of their decision-making processes.

MEAs are only beginning to internalize comparable logics of accountability, revealing both persistent gaps and early efforts to embed scrutiny within institutional practice. Under Article 24 BBNJ[129] the COP has the power to adopt emergency measures where activities under its jurisdiction pose a serious threat to marine biodiversity. This authority is subject to scientific justification, time limitation, and subsequent review, thereby embedding procedural safeguards directly into the exercise of institutional discretion. By contrast, within the UNFCCC, the Katowice Committee of Experts on the Impacts of the Implementation of Response Measures (KCI) illustrates how institutional effects are acknowledged without corresponding

[126] J. Brunnée, 'Promoting Compliance with Multilateral Environmental Agreements', in J. Brunnée, M. Doelle & L. Rajamani (eds), *Promoting Compliance in an Evolving Climate Regime* (Cambridge University Press, 2011), pp. 38–54.

[127] Bowman & Minas, n. 45 above; Green Climate Fund, Independent Evaluation Unit, 'Work Plan and Budget for 2025', GCF/B.40/23, Feb. 2025, available at: https://ieu.greenclimate.fund/workplan-2025.

[128] P. Dann & M. Riegner, 'The World Bank's Environmental and Social Safeguards and the Evolution of Global Order' (2019) 32(3) *Leiden Journal of International Law*, pp. 537–59; C. Passoni, A. Rosenbaum & E. Vermunt, 'Empowering the Inspection Panel: The Impact of the World Bank's New Environmental and Social Safeguards' (2017) 49(3) *New York University Journal of International Law and Politics*, pp. 921–58; S. Park, 'Designing Accountability, International Economic Organisations and the World Bank's Inspection Panel' (2010) 64(1) *Australian Journal of International Affairs*, pp. 13–36.

[129] N. 46 above.

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mechanisms of institutional accountability. Established to examine the socio-economic consequences of mitigation policies shaped or encouraged by the COP, the KCI recognizes that such measures can produce adverse spillovers for developing economies, including job losses and market disruption in fossil fuel-dependent sectors.[130] Yet its mandate is confined to technical analysis, capacity-building, and information exchange, with no authority to review the conduct of the COP itself. As a result, it engages with the downstream impacts of institutional decisions without scrutinizing the upstream processes that generate them. To serve as a tool of institutional accountability, the KCI would require an expanded mandate that extends beyond reviewing socio-economic effects to also assessing whether decision-making processes reflected key principles such as precaution, distributive justice, and rights protection.

Drawing on the emerging practices of the BBNJ COP and the KCI, other bodies could be equipped to assume additional elements of this accountability function. Scientific and technical bodies, for instance, could be tasked with reviewing the quality of institutional decision-making and administrative practice. Such reviews could both assess whether governing bodies engaged with scientific evidence in good faith and also examine how secretariats drew on that evidence in the preparation of agendas and policy options and in implementation support. Collaborative and interinstitutional forums could likewise be strengthened and mainstreamed to mutually review procedural inconsistencies or governance gaps that arise across related MEAs, particularly where decisions under one regime undermine or duplicate the functions of another. While expanding these functions would require adjustments to legal bases and operating procedures, such reforms would make institutional accountability an inherent feature of MEA governance rather than an external check applied after the fact.

4.2. Independence and Access to Information

Credible accountability requires the identification of whose conduct should be reviewed as well as a review that is both independent and informed. Independence and access to information are the two procedural preconditions of effective accountability. Independence gives reviewers the freedom to determine the scope and content of their inquiries and communicate their findings without political interference.[131] Access to information ensures that such scrutiny is grounded in the full evidentiary record of activities rather than in selective disclosure.[132] When these conditions operate

[130] Katowice Committee on Impacts (KCI), 'Enhancing the Capacity and Understanding of Parties, through Collaboration and Input from Stakeholders, on the Assessment and Analysis of the Impacts of the Implementation of Response Measures to Facilitate the Undertaking of Economic Diversification and Transformation and Just Transition', Technical Paper, 22 Sept. 2022, available at: https://unfccc.int/documents/614633.

[131] Keohane, n. 21 above.

[132] A. Gupta, 'Transparency under Scrutiny: Information Disclosure in Global Environmental Governance' (2008) 8(2) *Global Environmental Politics*, pp. 1–7; Keohane, n. 21 above, pp. 84–6; A. Florini, 'The End of Secrecy' (1998) 111 *Foreign Policy*, pp. 50–63.

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together, they produce transparency, understood as public visibility and also as an enabling state in which institutional processes, reasoning, and outcomes can be meaningfully evaluated.[133]

Under most MEAs, however, transparency has been institutionalized primarily in relation to state performance, most notably through the Enhanced Transparency Framework under the Paris Agreement,[134] whereas comparable approaches for the institutional arrangements themselves remain underdeveloped. Agendas and draft texts are typically prepared by the secretariats or small contact groups, and much of the substantive exchange among members unfolds in informal settings and under confidentiality practices (such as the Chatham House Rule), which prevent attribution and limit record-keeping.[135] The resulting acts usually capture outcomes but not the reasoning, trade-offs, or scientific judgements that shaped them. This culture of procedural discretion, while intended to facilitate consensus, can obscure how mandates are interpreted and how evidence and principles are weighed in collective decision-making.[136]

For an accountability mechanism to function effectively in this context, it must be insulated from political pressures and possess the authority to obtain and examine institutional records, correspondence, meeting summaries, and policy-support materials produced during agenda-setting, negotiation, and implementation.[137] Such access, however, should operate under formalized confidentiality and disclosure protocols consistent with the institutional practice of the MEA, balancing the legitimate need for diplomatic confidentiality with the public interest in transparent and reviewable governance.

Comparative experience demonstrates that independent review of politically sensitive information can be realized in practice under clearly defined access rights and confidentiality safeguards. The Independent Evaluation Unit of the Green Climate Fund, for instance, operates with unrestricted access to secretariat records, meetings, and staff, while binding evaluators to confidentiality rules aligned with UN standards.[138] The UN Joint Inspection Unit provides another model, combining

[133] Gupta, n. 132 above; M. Mason, 'Transparency, Accountability and Empowerment in Sustainability Governance: A Conceptual Review' (2020) 22(1) *Journal of Environmental Policy & Planning*, pp. 98–111; T.N. Hale, 'Transparency, Accountability, and Global Governance' (2008) 14(1) *Global Governance*, pp. 73–94.

[134] UNFCCC COP, Decision 18/CMA.1, 'Modalities, Procedures and Guidelines for the Transparency Framework for Action and Support referred to in Article 13 of the Paris Agreement', 19 Mar. 2019, UN Doc. FCCC/PA/CMA/2018/3/Add.2. See also M. van Deursen & A. Gupta, 'Is Enhanced Transparency the "Backbone" of the Paris Agreement? A Critical Assessment' (2025) 14(1) *Transnational Environmental Law*, pp. 41–68.

[135] A.B.M. Vadrot et al., 'Writing Negotiations: Collaborative Field Note-Taking during Global Environmental Meetings' (2025) *Qualitative Research*, pp. 1–22.

[136] See, e.g., A. Vihma, 'Climate of Consensus: Managing Decision Making in the UN Climate Change Negotiations' (2015) 24(1) *Review of European, Comparative & International Environmental Law*, pp. 58–68.

[137] Gupta, n. 132 above; Keohane, n. 21 above, p. 84.

[138] Green Climate Fund, 'Updated Terms of Reference of the Independent Evaluation Unit', 25 June 2021, B.BM-2021/15, paras 4–6, 15–6, 21, available at: https://www.greenclimate.fund/document/updated-terms-reference-independent-evaluation-unit; Green Climate Fund, 'Evaluation Policy for the GCF',

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organizational independence with system-wide access to documentation across UN entities, including the UN Environment Programme (UNEP) and other bodies involved in environmental treaty implementation, to evaluate their administrative effectiveness, coordination mechanisms, and governance practices.[139] These illustrations show that autonomy and access to information can coexist through formalized arrangements, yet their impact ultimately depends on whether institutions act upon the findings they generate.

4.3. Institutional Learning

Effective accountability mechanisms are not only retrospective but also foster an institutional capacity and commitment to learn from experience and translate those lessons into improved policies and practices. When accountability processes enable self-correction, they transform review into a driver of institutional adaptation, ensuring that governance processes remain aligned with evolving scientific knowledge and normative expectations.[140] Institutional learning that is formally linked to requirements to respond and adapt can function as a forward-looking dimension of accountability rather than a purely internal exercise.

For example, the Green Climate Fund's Independent Evaluation Unit promotes institutional learning by requiring formal responses to its recommendations within set timelines;[141] the UNEP Evaluation Office integrates cross-project findings into strategic planning to improve future performance;[142] and the World Bank's Independent Evaluation Panel tracks how lessons from past evaluations are incorporated into policy revisions and risk management standards.[143] Yet these systems also reveal the limits of institutional learning in multilateral settings: implementation often hinges on political will and resources, and evaluation findings may be used to legitimize existing practices rather than to drive tangible reform.[144]

In the context of MEAs, institutional learning would entail enabling systematic assessments of how operations advance or hinder treaty objectives, how they adapt to developing scientific knowledge and political priorities, and how they evolve in response to past outcomes. Translating these objectives into practice requires creating

4 May 2021, B.BM-2021/07, paras 15(a), 59–61, available at: https://www.greenclimate.fund/document/evaluation-policy-gcf.

139 E. Heldt et al., 'Persistence Against the Odds: How Entrepreneurial Agents Helped the UN Joint Inspection Unit to Prevail' (2021) 13(2) *Global Policy*, pp. 235–46; G. Roscher, 'Review of Consideration of and Action Taken on the Reports and Recommendations of the Joint Inspection Unit by United Nations System Organizations', Sept. 2024, JIU/REP/2024/2, available at: https://www.unjiu.org/sites/www.unjiu.org/files/jiu_rep_2024_2_0.pdf.

140 T. Schillemans & R. Smulders, 'Learning from Accountability?! Whether, What, and When' (2015) 39(1) *Public Performance & Management Review*, pp. 248–71.

141 See Decision B.BM-2021/07, n. 138 above, paras 1, 28, 64; Decision B.BM-2021/15, n. 138 above, paras 3–7, 24.

142 UNEP Evaluation Office, 'Evaluation Policy', 24 Oct. 2022, paras 17, 42–43, 46, available at: https://wedocs.unep.org/items/26c8da10-c1f4-486d-8c4a-70e307b2436e.

143 Dann & Riegner, n. 128 above; Passoni, Rosenbaum & Vermunt, n. 128 above.

144 N. Woods & A. Narlikar, 'Governance and the Limits of Accountability: The WTO, the IMF, and the World Bank' (2001) 53(170) *International Social Science Journal*, pp. 569–83.

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structured feedback loops that link evaluation to reform through iterative, criteria-based reviews and the integration of findings into work programmes, budgets, and coordination processes. Embedding policy and performance reviews into the regular work of secretariats, governing bodies, and subsidiary bodies could facilitate reflection on institutional effectiveness alongside assessments of national implementation. Moreover, joint evaluation exercises with related MEAs or partner institutions such as the UNEP, the Green Climate Fund, or the Global Environment Facility (GEF) could strengthen coherence and promote cross-learning.

4.4. Access for Affected Stakeholders

The final dimension of institutional accountability concerns the ability of those affected by institutional decisions to access mechanisms of review or redress. Such access transforms accountability from an exercise in internal management into a process of external scrutiny. Yet, in most international settings this external dimension remains weakly institutionalized, leaving powerholders only tenuously answerable to those outside their organizational hierarchy.[145]

Multilateral financial institutions offer instructive examples. The World Bank Inspection Panel, the Compliance Advisor Ombudsman of the International Finance Corporation and the Multilateral Investment Guarantee Agency, and the Conflict Resolution Commissioner of the GEF allow affected communities to contest institutional conduct and seek corrective action. Their influence, however, relies less on the legal force of their findings, which are typically advisory, than on their capacity to generate reputational pressure and institutional responsiveness. This reliance on 'soft power'[146] exposes a tension: such mechanisms can amplify affected voices and prompt procedural reform, yet they also risk becoming symbolic outlets that manage dissent without addressing deeper structural or distributive imbalances.[147]

For MEAs, the key challenge lies in adapting these lessons to a treaty-based context where the ability of outsiders to influence or challenge governance processes is limited. Even where participatory spaces exist, as under the CBD,[148] where a subsidiary body dedicated to local and Indigenous communities has been established,[149] engagement remains largely consultative, with limited bearing on final decisions.[150] These arrangements risk reproducing procedural openness without conferring meaningful influence over institutional outcomes.

[145] Mulgan, n. 24 above; Grant & Keohane, n. 21 above; Keohane, n. 21 above; Held, n. 23 above.
[146] Grant & Keohane, n. 21 above, p. 37.
[147] Keohane, n. 21 above; B.M. Saper, 'The International Finance Corporation's Compliance Advisor/Ombudsman (CAO): An Examination of Accountability and Effectiveness from a Global Administrative Law Perspective' (2012) 44(4) *New York University Journal of International Law and Politics*, pp. 1279–330, at 1322–4.
[148] N. 11 above.
[149] CBD COP, Decision 16/5, 'Institutional Arrangements for the Full and Effective Participation of Indigenous Peoples and Local Communities in the Work Undertaken under the Convention on Biological Diversity', 1 Nov. 2024, UN Doc. CBD/COP/DEC/16/5.
[150] Ebbesson, n. 30 above.

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To move beyond this tension, accountability under MEAs must embed participation within structures of answerability and decision-making.[151] Ombuds-type mechanisms and participatory bodies expand access but remain largely advisory, relying on voluntary uptake rather than institutional obligation. The next step is to institutionalize procedural links between participation and decision-making, including by requiring formal responses to findings, linking participation to compliance evaluations, and establishing clear procedural triggers for reconsideration. By giving stakeholder input procedural weight, MEAs can transform consultation into accountability that constrains institutional power and sustains public legitimacy.

5. Conclusion

The delegation of public authority from sovereign states to the institutional arrangements under MEAs marks a quiet yet profound transformation in global environmental governance. From setting norms to directing financial flows and reviewing implementation, COPs, secretariats, and similar bodies have evolved into autonomous institutions with far-reaching influence over the trajectory of global change. Yet, as this article has shown, their expanding power has not been matched by the development of robust accountability mechanisms, leaving a critical blind spot at the core of global sustainability efforts.

This article makes three key contributions to bridging that accountability gap. Firstly, it challenges the outdated framing of COP-driven institutional arrangements as mere diplomatic forums and offers a compelling case for recognizing them, functionally if not formally, as international organizations endowed with legal personality. This shift opens the door to applying the ARIO framework for international legal responsibility to MEAs, the governance of which is centred on a COP. Secondly, it demonstrates that MEA obligations arise not only from treaty texts but also from internal legal orders, customary law, and, in emerging discourse, individual rights, thereby enriching the legal basis for institutional accountability. Thirdly, it highlights how non-legal accountability mechanisms can embed scrutiny, transparency, learning, and stakeholder participation within institutional architecture, even in the absence of binding authority.

The central contribution of this article lies in advancing an analytical framework for thinking about how accountability might be institutionalized progressively across MEAs in ways that are preventive, responsive, and reflexive. The task ahead is to understand how accountability pathways can evolve in dialogue, with law providing normative and procedural grounding and institutional mechanisms offering adaptability, learning, and participation. In an era of escalating planetary risks, global environmental governance cannot afford institutions that are powerful but unaccountable. Institutional legitimacy requires more than compliance; it demands contestability and meaningful redress for those affected. Closing the accountability

[151] Bovens, n. 20 above.

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gap by designing accountability mechanisms that can harness this institutional power is, therefore, no longer a normative aspiration; it is an institutional imperative.

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