

## SYMPOSIUM ON KRISTINA DAUGIRDAS, “REPUTATION AS A DISCIPLINARIAN OF INTERNATIONAL ORGANIZATIONS”

### ARE NEW TECHNOLOGIES AN AID TO REPUTATION AS A DISCIPLINARIAN?

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Kristina Daugirdas offers a different vantage point from most scholarship on the accountability of international organizations (IOs) by examining whether a focus on reputation can address accountability deficits.<sup>1</sup> In this regard, reputational concerns could pressure international organizations to act by, for example, waiving immunity.<sup>2</sup> In this essay, I explore the relationship between reputation and accountability through the prism of new technologies. Koettl, Murray, and Dubberley highlight four technological developments—“satellite imagery, camera-enabled portable phones, digital social networks and publicly accessible data”—that underpin “human rights investigations in the digital age.”<sup>3</sup> This essay focuses on two of these technologies in particular: the use of new technologies to capture voice and image recordings of potential violations and the role of social media in amplifying allegations. I suggest that they can open routes to accountability in three ways. First, they expose and document claims of wrongdoing. Second, they provide corroborating evidence and thereby encourage victims to come forward. Third, they amplify claims and build public pressure and campaigns for accountability through social media. All three routes, individually or collectively, may lead to direct accountability as well as a structural analysis of how to prevent violations in the future. I then identify the factors that may elevate or reduce the levels by which an IO deems its reputation to be at risk and therefore responds, rather than deciding to “ride out” damage stemming from allegations of wrongdoing and a failure to act on them.

#### *New Technologies as an Aid to Reputation as a Disciplinarian*

Daugirdas observes that the power of reputation as a disciplinarian to a large extent depends on the likelihood of exposure. If it is unlikely that wrongdoing will be revealed, reputational risk will not be a central factor influencing whether an IO acts on allegations of wrongdoing. She notes that crimes such as “sexual violence and exploitation” are typically accompanied by high levels of underreporting.<sup>4</sup> Exposing violations may also be difficult in states that

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<sup>1</sup> Much of this scholarship focuses on the availability of immunities to international organizations. For an example, see generally CARLA FERSTMAN, [INTERNATIONAL ORGANIZATIONS AND THE FIGHT FOR ACCOUNTABILITY: THE REMEDIES AND REPARATION GAP](#) (2017).

<sup>2</sup> Kristina Daugirdas, [Reputation as a Disciplinarian of International Organizations](#), 113 AJIL 221 (2019).

<sup>3</sup> Christoph Koettl et al., *Open Source Investigations for Human Rights Reporting: A Brief History*, in DIGITAL WITNESS: USING OPEN SOURCE INFORMATION FOR HUMAN RIGHTS INVESTIGATION, DOCUMENTATION AND ACCOUNTABILITY (Sam Dubberley et al. eds., forthcoming 2019).

<sup>4</sup> [Daugirdas](#), *supra* note 2, at 268.

are difficult to access and where human rights defenders and journalists are at risk if they openly investigate allegations of human rights violations. In these contexts—demonstrated by the current situation in Myanmar—new technologies may play a role in exposing wrongdoing through documentation (although this type of documentation also poses significant risks for human rights defenders and journalists).<sup>5</sup> Perpetrators may also (inadvertently) provide evidence where they have recorded or recounted their own involvement in a crime on social media platforms.<sup>6</sup>

Exposing potential wrongdoing through the medium of new technologies can have three effects on the role of reputation as a trigger to accountability. First, new technologies may elevate marginalized voices<sup>7</sup> and pluralize and democratize the ways in which allegations are exposed and documented.<sup>8</sup> McPherson, Guenette Thornton, and Mahmoudi argue that new technologies can play a democratizing role

in terms of who is involved (amateurs and technologists as well as professional human rights fact-finders), the data under scrutiny (including social media content and publicly available databases such as Google Earth Pro), the methods used (such as cross-referencing the metadata of open source civilian witness content), and the norms about knowledge production that participants bring to the table (an emphasis on quantitative versus qualitative, for example).<sup>9</sup>

The increase in both the means and ability to document wrongdoing can increase the likelihood of exposure. The risk of exposure could potentially prevent violations taking place in the first place, and may also accord reputation a more significant position as a trigger to accountability. That said, the pluralizing and democratizing force of new technologies is constrained by a continuing digital divide and the risk exists that new technologies may simply amplify already powerful voices, such as those of prominent human rights organizations.<sup>10</sup>

Second, by pluralizing the sources of potential evidence, new technologies may provide more space for victims to come forward in the hope that they will be believed. Documentation through new technologies could therefore lessen situations in which claims of crimes, such as sexual violence and exploitation, involve a victim's word against that of powerful actors, such as states and IOs. At the same time, crimes such as sexual violence and exploitation are the types of claims for which the likelihood of recordings by eyewitnesses is low, given that the crimes do not typically take place in public. Discussing the impact of new technologies in the international criminal law setting, Alexa Koenig also expresses concern that the prominence increasingly given to evidence using new technologies could lead people to credit evidence documented using traditional methods less than evidence collected through new technologies.<sup>11</sup> Moreover, even where corroborating evidence through new technologies is available, as Daugirdas notes, the reasons for underreporting may stem from victims' lack of confidence in how an IO will react. She points out that underreporting

<sup>5</sup> Zara Rahman & Gabriela Ivens, *Ethics in Open Source Investigations*, in Dubberley et al., *supra* note 3.

<sup>6</sup> Alexa Koenig, *Open Source Evidence and Human Rights Cases: A Modern Social History*, in Dubberley et al., *supra* note 3.

<sup>7</sup> Philip Alston & Sarah Knuckey, *The Transformation of Human Rights Fact-Finding: Challenges and Opportunities*, in *THE TRANSFORMATION OF HUMAN RIGHTS FACT-FINDING* 13 (Philip Alston & Sarah Knuckey eds., 2016).

<sup>8</sup> See generally Rahman & Ivens, *supra* note 5; Molly Land & Jay Aronson, *The Promise and Peril of Human Rights Technology*, in *NEW TECHNOLOGIES FOR HUMAN RIGHTS LAW AND PRACTICE* (Molly Land & Jay Aronson eds., 2018).

<sup>9</sup> Ella McPherson et al., *Open Source Investigations and the Technology-Driven Knowledge Controversy in Human Rights Fact-Finding*, in Dubberley et al., *supra* note 3.

<sup>10</sup> *Id.*

<sup>11</sup> Alexa Koenig, *Open Source Investigations for Legal Accountability: Challenges and Best Practices*, in Dubberley et al., *supra* note 3.

may be inversely related to the quality of the United Nations' response to allegations of sexual violence and exploitation. That is, victims are less likely to bother making a report if they believe that doing so is pointless or if they fear being blamed or otherwise penalized by reporting such allegations.<sup>12</sup>

Thus, even if other sources of potential evidence are available, the willingness of victims to come forward may still turn on whether they see the IO acting in response to claims made through new technologies. Further, how victims respond to the exposure of alleged violations may depend on whether they have been identified in the documentation, particularly where the claims are publicized globally. Commentators have pointed to situations in which victims have reacted negatively when their cases are disclosed on social media without their consent.<sup>13</sup>

Third, the recording on mobile phones of conduct that may constitute human rights violations can be accompanied by reporting to human rights organizations or direct uploading to social media.<sup>14</sup> As a result, the allegations can spread quickly, particularly when linked to other networks and campaigns against the type of conduct being alleged, such as sexual violence and exploitation. These allegations therefore do not remain confined to a locale but can quickly mobilize international attention. This attention can lead to large-scale social media campaigns, which can put greater reputational pressure on organizations associated with the alleged violations.

In all three situations, reputational pressure can lead to direct action in a particular case, such as a waiver of immunity by an IO in order to enable the legal examination of the claims. Even where this does not happen, it can also result in structural action within an organization to assess the effectiveness of systems to prevent crimes, such as sexual violence and exploitation, from happening in the first place and to identify and take action to stop them if they occur.

#### *Factors Affecting the Likelihood That New Technologies Trigger a Response*

The publicity and virality that can accompany claims made on and amplified by social media can trigger organizations to act quickly. Not all claims will be true. Indeed, the possibility for individuals and other actors, including states, to make spurious and false claims is increased through the medium of new technologies, both for reasons of scale and because of the use of misinformation and disinformation, including through targeted campaigns.<sup>15</sup> Additional reputational costs can result from a slow response to claims. Thus, a timely response to allegations can improve the reputation of an organization by demonstrating a proactive response to the complaint, even if the claims being made turn out to be true, whereas a slow response can damage it, even if the claims turn out to be false.

Whether an organization will respond to allegations may depend on the nature of the claims and the attention such claims receive. As other essays in this symposium discuss, the identity of the author making the claim can matter (although in the case of social media, it may be that the number of claims also matters). Paul Stephan notes that the “reputational intermediary” that is the source of the allegation may affect the weight of any reputational harm. He argues that “[j]ournalists, NGOs, and judicial tribunals all affect reputation by providing additional information that might either enhance (well-regarded source or tribunal) or dampen (fake news, kangaroo

<sup>12</sup> [Daugirdas](#), *supra* note 2, at 268.

<sup>13</sup> *See generally* Koettl et al, *supra* note 3. *See also* Rahman & Ivens, *supra* note 5.

<sup>14</sup> *See generally* Koettl et al., *supra* note 3.

<sup>15</sup> Claire Wardle & Hossein Derakhshan, [Information Disorder: Toward an Interdisciplinary Framework for Research and Policymaking](#) (Council of Europe Report DGI(2017)09, Sept. 27, 2017). *See also* European Commission, [A Multi-Dimensional Approach to Disinformation](#) (Mar. 12, 2018).

court) the impact on others of information about an actor's reputation. How audiences view the intermediary depends ultimately on the intermediary's reputation."<sup>16</sup>

In this regard, some states have opted to respond to claims of wrongdoing, crimes, or human rights violations by characterizing them as fake news and/or attacking the credibility of the author, including by spreading disinformation.<sup>17</sup> These types of claims can chill the documentation of potential violations and threaten the impact they might have in triggering investigations. At the same time, there could be additional reputational costs on a state for claiming that a particular incident constitutes fake news, if the incident is later verified. Reputational costs could be particularly heavy for an IO if it seeks to deny claims in this way rather than investigate them, with tangible consequences such as withdrawal of support from donors. Indeed, donors and other actors with influence over an IO may often be the actual target of social media campaigns as a way to instigate them to act. In an era of funding cuts and failures by some states to pay their dues to IOs, pressure from funders as a result of reputational concerns can render the role of reputation as a disciplinarian particularly effective.

Equally, while the individuals capturing voice or image recordings may be private individuals and thus more susceptible to challenges to their expertise and "authority," their position may be buttressed by the reputational status of others. For example, where a public figure or celebrity supports a claim or campaign, its status typically increases. A number of prominent human rights organizations also offer ways for private eyewitnesses to report claims of wrongdoing and have put systems in place to verify those claims. For example, Amnesty International runs a Digital Verification Corps whereby students at a range of universities are trained to verify video images posted on social media. When verified in this way, private claims then draw on and are elevated through the reputation and professionalism of prominent international NGOs. In this way, claims made through the use of new technologies can have a serious impact on reputation, particularly when they are made through multiple sources, which makes them harder to deny.

Daugirdas notes that one strategy that organizations can adopt is to "ride out" claims against it. She points out that "organizations are not equally responsive to all of their audiences" and are not obligated to respond to allegations made by journalists or human rights organizations. For IOs, she notes that the position of member states, particularly those that provide "key resources" to the IO, may influence whether the organization responds to claims using new technologies.<sup>18</sup> However, the speed, potential global scale, and mobilization of information-sharing made possible through social media can challenge the effectiveness of "riding out" claims and may therefore motivate IOs to deal with the allegations using traditional accountability routes rather than undergoing trial by social media.

### *Conclusion*

The emergence of new technologies introduces many complex and conflicting dimensions to the role of reputation as a means to accountability. On the one hand, the possibility of mediating accountability through social media may encourage IOs to make legal processes more available, including by waiving immunity, lifting what has traditionally posed a significant barrier to accountability. On the other hand, while using new technologies to manipulate the levers of reputation may trigger accountability processes, it also has the possibility to hamper them. Particularly in criminal cases involving juries, discussion of a case on social media could affect the possibility of a fair trial.<sup>19</sup> Further, even where courts reach a decision, the judgment may still be contested and subject to dispute on social media. Depending on the authors and nature of the critiques, such a situation could result in further cycles of reputation as a disciplinarian.

<sup>16</sup> Paul Stephan, *What Should We Ask Reputation to Do?*, 113 AJIL UNBOUND \_\_\_\_ (2019).

<sup>17</sup> Antonio Guterres, [Remarks to the Human Rights Council](#) (Feb. 25, 2019).

<sup>18</sup> [Daugirdas](#), *supra* note 2, at 230-32.

<sup>19</sup> Cathryn Evans, [Can Social Media Damage Your Right to a Fair Trial?](#), RIGHTSINFO (Oct. 18, 2017).