

INTRODUCTION TO THE SYMPOSIUM ON KRISTINA DAUGIRDAS, “REPUTATION AS A DISCIPLINARIAN OF INTERNATIONAL ORGANIZATIONS”

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The spectacular failings of international organizations (IOs) generate front page news. UN peacekeepers, for example, are blamed for triggering a cholera epidemic in Haiti,¹ and for sexual exploitation in the Central African Republic.² The notion that international intervention makes an already bad situation even worse raises anew concerns that international institutions are unaccountable actors.³ Because international institutions enjoy legal immunity, Kristina Daugirdas suggests that reputation might be a substitute force that disciplines IOs.⁴ Harnessing reputational concerns towards this end, however, is challenging. This symposium engages the challenge that Daugirdas sets out when she asks us to consider whether reputational concerns might be a force that promotes better oversight and behavior by IOs and their employees.

Reputation as a Disciplinarian of IOs Cuts in Multiple, Sometimes Contradictory, Directions

Daugirdas offers us a complicated perspective on whether or not a concern for reputation can help discipline IOs. In *Reputation as a Disciplinarian of International Organizations*, Daugirdas compellingly argues that IOs and their leaders care about their reputation.⁵ IOs must care about their reputation, she claims, because they are public, nonstate entities with few material resources, and they are heavily dependent on voluntary compliance. Daugirdas shows that IO leaders openly profess their concern about the IO’s reputation, in part because they understand that IOs depend on having a good reputation, but also because maintaining the reputation of the organization may be a formal part of the mandate of the institution, and thus part of the job description of high-level IO employees.

Yet having a good reason and a formal mandate to take care of the IO’s reputation may not be enough of a guide for IO leaders, or for actors who sit in judgment of whether or not the IO is in good reputational standing. Many analysts like to treat actors such as states, NGOs, and international institutions as unified entities—what scholars call a black box—thus reifying the fiction of an organization as a corporate actor. Daugirdas reminds us that IOs and their audiences are not, in fact, single corporate entities. International institutions are composed of employees who are real people confronted with very difficult situations. Also, IOs are probably better conceived of as composite actors with many different types of responsibilities, goals, and roles. Since they are composite rather than

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¹ Mara Pillinger et al., *How to Get Away with Cholera: The UN, Haiti, and International Law*, 14 PERSP. ON POL. 1, 70 (2016).

² Sandra Laville, *UN Aid Worker Suspended for Leaking Report on Child Abuse by French Troops*, GUARDIAN (Apr. 29, 2015).

³ Robert Keohane & Ruth W. Grant, *Accountability and Abuses of Power in World Politics*, 99 AM. POL. SCI. REV. 29 (2005).

⁴ Kristina Daugirdas, *Reputation as a Disciplinarian of International Organizations*, 113 AJIL 221 (2019).

⁵ *Id.* at 226–28.

corporate entities, there may be no single IO mandate for institutional leaders to curate. Daugirdas demonstrates how the multiple mandates and masters of IOs may conflict, disagree, or push in opposite directions.⁶ Moreover, IOs must do more than worry about whether their masters (formally speaking, states) are pleased. Even if the interventions of IOs are constrained by limited formal mandates that states have defined and intentionally circumscribed, the audiences of IOs will nonetheless include publics, private actors, and nongovernmental actors that may not accept as valid the limitations states imposed. These actors will judge IOs by different types of metrics. For example, a peacekeeping mission might have a limited mandate of observing adherence to a cease-fire agreement. Yet local citizens and NGOs might expect the peacekeepers to protect civilians in their care, even in the face of militia incursions and with respect to issues such as health crises and crime that fall outside of the purview of the peacekeeping mission.

These many complications make it very difficult for all involved to know what an IO operating in a particular situation “should” be doing to maintain its good reputation. Moreover, the concern for reputation is double-edged. A reputational concern may push IOs to behave well, and in this respect, reputation can be a disciplinary tool that promotes accountability. On the other hand, reputational concerns can lead IO employees to suppress information that casts the institution in a negative light, to adopt symbolic or deflecting responses that inadequately address bad behavior, and to actively work to protect the IO from becoming accountable.

Daugirdas illustrates these many complications by exploring the United Nation’s response to credible accounts that UN forces engaged in sexual violence in the Central African Republic.⁷ Not only did the UN deflect and suppress negative stories. In its desire to placate certain states, the UN also took risks in accepting as staff undisciplined peacekeeping forces, and then failed to sufficiently supervise and punish their transgressions.⁸ Daugirdas’s discussion of the Central African Republic story—replete with gray zones, no win situations, and questionable decisions—is considerably more complicated than this short synopsis. However, the bottom line is that even if we agree that reputation can serve as a disciplining force, a concern for reputation cuts in multiple directions.

Using IO Concerns About Following Law as a Reputational Guide

Political scientists often stop once they have diagnosed and explained a problem. I have come to appreciate the penchant of lawyers to look for silver linings, remedies, and possible solutions. Daugirdas’s silver lining is that reputational concerns generate both positive and perverse incentives. If we can enhance the positive elements and dissuade IO employees from trying to hide, suppress, and avoid reputational costs, perhaps we can leverage reputational concerns towards good ends. Like good international lawyers do, Daugirdas looks to law as a remedial guide. She suggests that a reputation for compliance with legal obligations may offer an often overlooked partial remedy.⁹ IOs and their employees generally enjoy political and/or diplomatic immunities; Daugirdas is not suggesting that this change. She suggests, however, that we pay less attention to the formal legal question of IO immunities, harnessing reputational concerns and the guidance law provides as a disciplinary tool. In other words, we should expect IOs to follow the law, and therefore should treat legal violations as reputational demerits. Elevating our expectations for IO law compliance might create an additional positive way to deploy reputation as a disciplinarian of IOs.

Finally, Daugirdas proposes additional potential solutions. She suggests that IO watchdogs can do more to converge around a set of reputation expectations. This convergence might provide helpful guidance and temper the

⁶ *Id.* at 228–35.

⁷ *Id.* at 245–255.

⁸ *Id.* at 254–60.

⁹ *Id.* at 261–3.

problem of multiple masters and multiple mandates. She also suggests that with respect to sexual violence, a reorientation may be in order. As employees of IOs, peacekeeping forces may enjoy immunity. But the institution, backed by state support, can decide to waive this immunity—as IOs sometimes do—to prosecute perpetrators of sexual violence. She therefore suggests that with respect to sexual violence, the reputational metric should be no sexual transgressions, and the IOs should encourage the relevant states to prosecute perpetrators by waiving immunity.

The Essays in this Symposium

This symposium grapples with the idea that reputation may act as a disciplinarian of IOs, proposing additional solutions and raising additional challenges.

Paul B. Stephan, from the University of Virginia School of Law, deconstructs the mechanisms through which reputation might operate to shape behavior.¹⁰ His quest is to discern what work we should expect reputation to do in shaping IO behavior. Stephan suggests that reputation observers do not invest heavily in gaining information. For this reason, IOs and states can fairly easily check a “good reputation” box, after which they can ignore everything they said and promised. If this is the case, then how could one devise an organizational strategy to harness a reputational concern towards good ends? Stephan draws on institutional economics and contract theory to offer some suggestions. Stephan’s turn to contract theory allows him to think outside of the confines of extant IO policies and practices. Stephan asks whether IOs should create their own forces (“make” the peacekeepers they need) or contract with states for these forces (“buy” the forces they need). Rather than advocating one approach over the other, Stephan creates a toolkit that policy-makers can use once they decide the work that they want reputational concerns to do in promoting good IO policy and behavior.

Sabrina M. Karim, from the Government Department of Cornell University, draws on her research regarding the incentives of “contributing states,” meaning those countries who directly provide peacekeepers to UN missions.¹¹ Karim explores how UN and contributing states’ concerns for reputation interact with one another, thereby sometimes decreasing the quality of troops. As Daugirdas noted, the UN often worries about upsetting contributing states by advertising the failings of particular troops. Karim thinks that the UN should worry less than it does, and that it should create carrots and sticks that incentivize poorly performing contributing states to do better. Whereas Daugirdas looks to law as a guide, Karim looks to transparency in information about reputation as a way to identify quality troops. Drawing on her work with Kyle Beardsley, Karim also suggests that gender equity practices can help prevent sexual exploitation and abuse by peacekeepers. She further suggests that creating norms and expectations around gender equity can improve the quality of UN troops.¹²

Kristen Boon, from Seton Hall School of Law, takes seriously Daugirdas’s suggestion that we might use law as a guide to productively harness IO reputational concerns.¹³ Boon observes that IOs will acknowledge wrongdoing yet actively avoid creating financial liabilities so that reputation works differently as a disciplinarian depending on whether financial remedies are at stake. Boon identifies a push-and-pull dynamic that comes from legalized responsibility rules. States and international actors often shift responsibility to other states, to IOs, or to individuals. Law shapes the extent to which IOs must claim responsibility and identify a remediation strategy. Her

¹⁰ Paul B. Stephan, *What Should We Ask Reputation To Do?*, 113 AJIL UNBOUND 223 (2019).

¹¹ Sabrina M. Karim, *Balancing Incentives Among Actors: A Carrots and Sticks Approach to Reputation in UN Peacekeeping Missions*, 113 AJIL UNBOUND 228 (2019).

¹² SABRINA KARIM & KYLE BEARDSLEY, *EQUAL OPPORTUNITY PEACEKEEPING: WOMEN, PEACE, AND SECURITY IN POST-CONFLICT STATES* (2017).

¹³ Kristen Boon, *Reputation and the Accountability Gap*, 113 AJIL UNBOUND 233 (2019).

contribution is replete with examples of the recent practices of judges, IOs, and state actors that are shaping the terms through which IOs claim and legal bodies allocate responsibility. Her bottom line is that immunities shape the reputational calculus of IOs and states.

Lorna McGregor, from the University of Essex, examines how new technologies affect the monitoring of UN forces, and thus our ability to use reputation as a disciplinarian of IOs.¹⁴ New technologies, including satellite imagery, cell phones with cameras, social media, and publicly accessible data, offer additional ways to observe the behavior of peacekeepers. Yet the dynamics these new technologies introduce can make managing an IO's reputation more difficult. The images cell phones capture can go viral, and they can be manipulated. In addition, some states will respond to credible evidence by labeling images "fake news." The UN's reputation will be affected by postings that correctly and incorrectly highlight violations by UN forces, and by the responses of criticized governments. Putting legal and accountability concerns to the side, McGregor suggests that IOs need media savvy strategies to respond to these new technology dynamics.

Emilie M. Hafner-Burton and Christina J. Schneider, both from the Department of Political Science at University of California San Diego, provide a fundamentally different perspective on how the reputation of IOs may be important.¹⁵ They focus on situations where participation in IOs "allows states to in essence write binding-like contracts that reassure their audience(s) that they mean what they promise, and will pay a cost for renegeing." Hafner-Burton and Schneider consider how the membership composition of IOs affects the credibility of state commitments, and thus the reputational benefits states accrue by virtue of IO membership. Their primary concern is the protection of investor rights. IOs with rule-violating members and lax enforcement do not enhance the credibility of a member state's commitment to investors, whereas IOs with rule-following members can provide a reputational boost for member states. Drawing on an analysis of IO membership, investor-protection regimes, and foreign direct investment flows, they suggest that "the company you keep" within an IO may actually discourage investment. Their analysis raises the question of whether IOs would have a better reputation if they excluded as members states that are well-known violators of the IO's collective agreements. They also suggest that enforcement of investor rights provisions can boost the credibility of IOs and credible-commitment benefits that states desire.

Conclusion

Identifying challenges and problems in harnessing reputation as a disciplinarian for IOs is easier than positing solutions. As a whole, Daugirdas's article and the thoughtful engagements in this symposium suggest that law provides a useful starting point but not really a remedy for the problem at hand.

All agree that one must move beyond the law to harness reputation as a disciplinary tool for IOs. The contributions highlight a number of options, including having the UN work harder to select, train, monitor, and police UN peacekeepers, and having IOs create more comprehensive strategies to manage public responses and to promote UN and state-level accountability.

Whether and how prosecutions of violations fit into the overall reputation-management strategy is far from clear. One would need to first solve the conundrum of who would do the prosecuting. Once this question is answered, as Boone notes, prosecution can open up a can of state-liability worms. Even if we could solve the "who prosecutes what" question, it is not clear that prosecutions would improve the reputation of the UN and

¹⁴ Lorna McGregor, *Are New Technologies an Aid to Reputation as a Disciplinarian?*, 113 AJIL UNBOUND 238 (2019).

¹⁵ Emilie M. Hafner-Burton & Christina J. Schneider, *The Company You Keep: International Organizations and the Reputational Effects of Membership*, 113 AJIL UNBOUND 242 (2019).

its forces. Perhaps for this reason, much of the focus has been on other ways to prevent future violations and reputational harms to IOs.

The editors and contributors to this symposium largely followed Daugidas in her focus on reputation in the context of peacekeepers. The contribution by Hafner-Burton and Schneider, with their focus on the investment context, shows how each subject matter raises its own reputational challenges. From these various engagements we can see how fruitful it can be to think about when and how reputation and legal enforcement can be harnessed as tools to improve UN and other operations in the different areas that IOs operate.