NEW TECHNOLOGIES IN INTERNATIONAL CRIMINAL AND HUMAN RIGHTS INVESTIGATIONS AND FACT-FINDING

This panel was convened at 3:00 p.m. on Thursday, April 5, 2018 by its moderator, Molly K. Land of the University of Connecticut School of Law and Human Rights Institute, who introduced the panelists: Brittany Benowitz of the American Bar Association; Jonathan Drake of the American Association for the Advancement of Science; Rebecca Hamilton of American University Washington College of Law; Julian Nicholls of the Office of the Prosecutor, International Criminal Court; and Brad Samuels, SITU Research.

INTRODUCTORY REMARKS BY MOLLY K. LAND*

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New innovations in human rights fact-finding and criminal investigations offer both opportunities and challenges for human rights law in practice.1 As documentation of human rights violations becomes more difficult and complex, practitioners are exploring ways to augment their work with new tools and new methodologies.2 Social media, accessible satellite data, and even drone technology have expanded the capacity of human rights investigators to document abuses, even when access to the sites of atrocities is limited.

At the same time, these new tools and methods inevitably bring with them a host of new challenges. Indeed, it is often the most exciting characteristics of new technologies that generate the greatest risks. For example, user-generated content may mean broader participation in fact-finding, but it also means documentation by individuals not necessarily trained in the ethical standards of human rights investigation or the evidentiary standards used by international tribunals.3 As Brittany Benowitz discussed during the panel, the same tools deployed to support accountability efforts are also used to expose, harass, and threaten human rights defenders. To counter these risks, some have called for the development of standards to regulate the use of new technologies in human rights investigations. Yet fact-finding occurs under a variety of conditions, and imposing “one size fits all” standards could undermine accountability efforts.

Further, although new innovations in fact-finding are often heralded as presenting opportunities to decentralize and democratize human rights advocacy, technological innovation more frequently reinforces and exacerbates inequality.4 Geospatial technologies and drones are not technologies accessible to most human rights advocates. Further, uncertainty and lack of expertise among

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3 Molly K. Land & Jay D. Aronson, Technology and Human Rights Enforcement, in NEW TECHNOLOGIES FOR HUMAN RIGHTS LAW AND PRACTICE, supra note 1, at 125, 126.
4 Land & Aronson, supra note 1, at 8.
smaller organizations may exacerbate the risks of deploying new technology. As Jonathan Drake emphasized in his remarks, human rights organizations that have the ability to do this work must consider how to create sustainable interventions.

Further, it is not clear how to reconcile the different approaches to risk embedded in the culture and practices of human rights researchers on the one hand, and innovators on the other. Innovation in Silicon Valley privileges failure as an essential mechanism of feedback and emphasizes the importance of moving quickly and fixing problems later. Human rights, however, necessarily tolerates less risk because of the potential impact on rights and on the security and safety of victims, witnesses, and investigators. How do we reconcile the desire for robust innovation with the need to ensure safety and protect rights? With the legal and ethical demands of fact-finding? Even if attending to these concerns means less innovation, the importance of considering the human rights impact of new technological developments before deployment cannot be overstated.

All of these risks and opportunities are being generated in an environment in which human rights organizations, funders, and technology companies are encouraging technological solutions to documentation and advocacy problems. Yet the challenges that human rights documentation and advocacy face—from failures of political will to breakdowns in the rule of law—will not be solved by new technologies. The allure of “technological solutionism” should not lead us to “neglect the more traditional advocacy and grassroots mobilization strategies that are necessary to generate the political will required for social change.”

The panelists considered these questions from the perspective of experts supporting international investigations, academics monitoring the rise and challenges technology, and justice sector officials who grapple with technology-generated data in court proceedings. Brad Samuels is a partner at SITU Research, a design firm in New York, where he heads a division specializing in the use of new technologies to document human rights abuses. Jonathan Drake is Senior Program Associate in the Geospatial Technologies Project at the American Association for the Advancement of Science. Rebecca Hamilton is Assistant Professor of Law at American University Washington College of Law. Julian Nicholls is Senior Trial Attorney at the Office of the Prosecutor at the International Criminal Court. Brittany Benowitz is Chief Counsel at the Center for Human Rights at the American Bar Association.

**Remarks by Jonathan Drake**

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Since 2005, the American Association for the Advancement of Science (AAAS) has been exploring the use of Geospatial Technologies in a Human Rights Context. These efforts began

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6 Land & Aronson, *supra* note 3, at 127 (“Local groups do not have the resources they need to use technology effectively or safely in their work, and more powerful groups may appropriate the documentation they produce without providing any direct benefit in return.”).

7 Lea Shaver, *Safeguarding Human Rights from Problematic Technologies*, in *NEW TECHNOLOGIES FOR HUMAN RIGHTS LAW AND PRACTICE*, supra note 1, at 26, 44 (arguing that the human right to share in the benefits of science means that “[t]he introduction of unproven and potentially dangerous technologies” should be subjected to safeguards similar to those that accompany the human subjects research).

8 Land & Aronson, *supra* note 3, at 128.


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