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ARTICLE

International Law Shaping and Digital Ecosystems: Between Sensationalism and Empowerment

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Abstract

Communities of international legal discourse have been increasingly favouring tweets and blogs over traditional media of academic expression. Legal practice communities have likewise been abandoning press releases in favour of tweets and digital newsletters. For discourse communities, this trend can broaden the scope of eligible participants, while encouraging progress through contestation and legal pluralism. At the same time, it may encourage over-contentiousness, sensationalism, "celebritism", and "click-hunting", at the expense of genuine dialogue and problem-solving. For communities of practice, the spatial particularities of social media platforms prompt rapid exchanges and reposts with minimal prior reflection, while offering no tangible benefits compared to traditional means of law shaping. The trend, in any event, appears irreversible. We should thus shift to capitalizing on this trend's benefits while mitigating its various side effects through an organic process of increased awareness.

Keywords: communities of practice; discourse communities; digital ecosystems; international law; social media

In recent years, the advent of blogs and social media has prompted an increasing number of studies on the interactions between international law and digital ecosystems.[1] These studies have tended to focus on the extent to which the traditional regulatory paradigms of human rights and humanitarian law can mitigate the socio-political externalities of digital ecosystems,[2] or more broadly, on whether traditional international law possesses the

[1] This article employs the term "digital ecosystem" in the meaning ascribed to it by Matthias Koch, Daniel Krohmer, Matthias Naab, Dominik Rost, and Marcus Trapp. They note: "A digital ecosystem is a socio-technical system connecting multiple, typically independent providers and consumers of assets for their mutual benefit. A digital ecosystem is based on the provision of digital ecosystem services via digital platforms that enable scaling and the exploitation of positive network effects" (see Matthias KOCH, Daniel KROHMER, Matthias NAAB, Dominik ROST, and Marcus TRAPP, "A Matter of Definition: Criteria for Digital Ecosystems" (2022) 2 Digital Business 1 at 9). The contribution is therefore not limited to digital "platforms" as such and considers the broader architecture and configuration of international law-related digital media of expression. This also permits insights ranging beyond the organizational particularities of given social media platforms, seeing as "[e]cosystems are not fully hierarchical and therefore distinct from the organisational model of an integrated 'firm'" (Ioannis LIANOS, Klaas Hendrik ELLER, and Tobias KLEINSCHMITT, "Towards a Legal Theory of Digital Ecosystems" (27 May 2024) Amsterdam Law School Research Paper No 2024-22, online: http://dx.doi.org/10.2139/ssrn.4849340 at 11).

[2] See, *ex multis*, Barrie SANDER, "Democratic Disruption in the Age of Social Media: Between Marketized and Structural Conceptions of Human Rights Law" (2021) 32 European Journal of International Law 159; Neema

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requisite flexibility and design features to meaningfully constrain algorithms and persuasive technology.[3] Against this background of increased awareness about the social risks of digital ecosystems, and given the increased self-reflectiveness of international legal academia overall, surprisingly limited attention has been paid to the question of how the "social mediatization" of social expression may impact international law, that is, of how digital ecosystems may affect the processes of international "law shaping". But if it is now commonplace that blogs, tweets, streaming platforms, and other digital ecosystems are so widespread as to have a profound impact on social expression at large, international legal expression (whether academic or "executive"), as a subset of social expression, certainly deserves more reflection as regards its "digitalization".

To cover some of this ground, the present article expands upon contributions by A. Duval and R. Janik, who analyzed the impact of blogs and social media on legal academia. The article considers, in particular, how digital ecosystems more generally may condition, or even transform, international law-shaping processes, and reflects on the stance the "shapers" of international law should adopt vis-à-vis the pros and cons of social mediatization. It does so as follows: section I introduces the notion of international law shaping and situates international legal "discourse" and "practice communities" within it. Section II briefly reviews the traditional means of international law shaping, whereas section III describes the current trend toward the social mediatization and broader digitalization of international law shaping. Section IV discusses the gains and losses this trend entails for discourse and practice communities, whereas section V offers concluding remarks on how such gains and losses can be capitalized upon and mitigated respectively.

I. Discourse communities, communities of practice and international law shaping: why the "game" and its "players" matter

While (public) international norms are formally "made" by governmental actors, the presumed state will expressed by these actors is "shaped" in part by the non-governmental interest groups which stand at the receiving end of international law. As various contributions inspired by ethnography and sociology/anthropology more generally have highlighted in recent years, besides lobbies, industry associations, and other direct stakeholders, these interest groups include practitioners, academics, and the staff of international tribunals and organizations;[4] or, in O. Schachter's colloquial terms, the "invisible college of international lawyers".[5] This college includes both "discourse communities" (defined by

HAKIM, "How Social Media Companies Could Be Complicit in Incitement to Genocide" (2020) 21 Chicago Journal of International Law 83; Chiraz BELHADJ ALI, "International Crimes in the Digital Age: Challenges and Opportunities Shaped by Social Media" (2021) 9 Groningen Journal of International Law 43.

[3] See, *ex multis*, Shin-yi PENG, *Artificial Intelligence and International Economic Law: Disruption, Regulation, and Reconfiguration* (Cambridge: Cambridge University Press, 2021); Dimitri VAN DEN MEERSSCHE, "Virtual Borders: International Law and the Elusive Inequalities of Algorithmic Association" (2022) 33 European Journal of International Law 171; ABHIVARDHAN, "Algorithmic Policing and International Law: Critical Realities in Data-Driven Corporates and Governments over AI Realms" (2019) 8 Nirma University Law Journal 71.

[4] See, e.g., Tommaso SOAVE, *The Everyday Makers or International Law: From Great Halls to Back Rooms* (Cambridge: Cambridge University Press, 2022); Karen N. SCOTT, Kathleen CLAUSSEN, Charles-Emmanuel CÔTÉ, and Atsuko KANEHARA, eds., *Changing Actors in International Law* (Cambridge: Cambridge University Press, 2020); Michael WAIBEL, "Interpretive Communities in International Law" in Andrea BIANCHI, Daniel PEAT, and Matthew WINDSOR, eds., *Interpretation in International Law* (Oxford: Oxford University Press, 2015), 27; Nehal BHUTA, "The Role International Actors Other Than States Can Play in the New World Order" in Antonio CASSESE, ed., *Realizing Utopia: The Future of International Law* (Oxford: Oxford University Press, 2012), 31.

[5] Oscar SCHACHTER, "The Invisible College of International Lawyers" (1977) 72 New York University Law Review 219. To be sure, with the networked relationships of international lawyers having become particularly apparent since Schachter's articulation of the notion of the "invisible college" (see, e.g., Luiza L. S. Pereira and Niccolò Ridi's

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J. Swales as groups that have common public goals and employ inter-communication mechanisms, genres and lexes to achieve them, while possessing a threshold level of members),[6] and "communities of practice" (defined by E. and B. Wenger-Trayner as "groups of people who share a concern or a passion for something they do and learn how to do it better as they interact regularly").[7] Within the context of international law shaping, discourse communities can broadly be identified with international legal academics, whereas communities of practice comprise, besides government officials, the direct stakeholders and interest groups of international law referenced immediately above.

The processes by which discourse communities can tangibly affect the shaping of international law can be analogized to how A. Bianchi approaches the "game of interpretation"; as Bianchi puts it, in interpretation,

> there are players who are engaged in the game and who are supposed to interpret the law. The "rules of play" are known and complied with by the players, even though which cards to play and when is left to the skills and strategies of the individual players. And – quite obviously – the game has an object. In order to win the game, one must secure adherence with his or her own interpretation of the law.[8]

Similar to the game of interpretation, the game of "academic discourse"[9] involves academics as players who contribute to norm-shaping either *ex post*, by "marketing" their preferred understanding of given norms to students, peers and policy-makers, or *ex ante*, by framing the discourse which conditions the production of these norms. Besides Article 38(1)(d) of the Statute of the International Court of Justice, what enables this game is, largely, the de-centralized design of international law, the multiplicity of its bases of authority and its consequent "contestability". Within such a disorderly framework, international legal academics can indeed exert "indirect, yet powerful, influence on the continued development" of international law.[10] Specifically, as best summarized by A. Peters, international legal academics can "perform a task of verbalising and ordering, which is needed for grasping an international norm and making it operational in the first place".[11] G. Hernández

demonstration of these relationships through network analysis in Luiza L. S. PEREIRA and Niccolò RIDI, "Mapping the 'Invisible College of International Lawyers' Through Obituaries" (2021) 34 Leiden Journal of International Law 67), what Schachter once viewed as a sum of individuals dedicated to a common intellectual enterprise has now become an interconnected and "highly visible public college before a body politic that has acquired a taste for the rule of law in the conduct of international relations" (Gillian TRIGGS, "The Public International Lawyer and the Practice of International Law" (2005) 24 Australian Year Book of International Law 201, at 201).

[6] John SWALES, *Genre Analysis: English in Academic and Research Settings* (Cambridge: Cambridge University Press, 1990), section 2.1.

[7] Etienne WENGER-TRAYNER and Beverly WENGER-TRAYNER, "Introduction to Communities of Practice: A Brief Overview of the Concept and Its Uses" (June 2015) online: www.wenger-trayner.com/introduction-to-communities-of-practice/ at 2.

[8] Andrea BIANCHI, "The Game of Interpretation in International Law: The Players, the Cards, and Why the Game is Worth the Candle" in Andrea BIANCHI, Daniel PEAT, and Matthew WINDSOR, eds., *Interpretation in International Law* (Oxford: Oxford University Press, 2015), 34 at 35.

[9] Understood here as "forms of oral and written language and communication – genre, registers, graphics, linguistic structures, interactional patterns – that are privileged, expected, cultivated, conventionalized, or ritualized", per Patricia A. Duff's definition (Patricia A. DUFF, "Language Socialization into Academic Discourse Communities" (2010) 30 Annual Review of Applied Linguistics 169 at 175).

[10] Gleider HERNÁNDEZ, "The Responsibility of the International Legal Academic: Situating the Grammarian Within the 'Invisible College'" in Jean D'ASPREMONT, Tarcisio GAZZINI, André NOLLKAEPER, and Wouter WERNER, eds., *International Law as a Profession* (Cambridge: Cambridge University Press, 2017) at 188.

[11] Anne PETERS, "Realizing Utopia as a Scholarly Endeavour" (2013) 25 European Journal of International Law 533 at 538.

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similarly posits that discourse communities in international law "come to create, interpret and render operative the international law with which they engage in their professional practice"; at the same time, they generate background ideas which then circularly "come to constitute, or at least structure, the professional vocabularies of all international lawyers",[12] lending "legitimacy and prestige to the technically proficient individual".[13] In all, as "grammarians",[14] the members of discourse communities "contribute … to the understanding of what may or may not be stated, the acceptable or legitimate language that may be used"[15] by the "makers" of international law. The "prize" for carrying out this task consists in the moral satisfaction, sense of purpose or feeling of achievement academics derive from witnessing the impact of their work, whether in terms of establishing new parameters of thought or tangibly affecting the practices of the direct "makers" of international law. Indirect financial incentives, or even incentives or sheer power, are, naturally, also at play.

Likewise, the players of the game of "legal practice" are not only governments and other direct stakeholders or interest groups which advertise normative positions to protect their self-interests, but also lawyers, arbitrators and the staff of international organizations, who shape the law through their professional, and even purely personal, interactions. Recognizing the profound law-shaping potential of such interactions, P. Bourdieu, in the words of N. Rajkovic, theorized the authoritative construction of legal meaning as "something more than individual decision-making", since the outcome of rule-application naturally involves "interaction between juridical language and the professional division of juridical labour".[16] The "practical meaning" of the law is in this sense "shaped by confrontation between different categories of jurists (e.g. judges, lawyers, and scholars), each moved by divergent interests informed by professional hierarchy and the social position of respective clients".[17] Relatedly, F. Cardenas and J. D'Aspremont posit that international judges, arbitrators, counsel, and members of registries constitute "a non-systematically organized network of professionals belonging to a broader and overarching epistemic community in the sense that they share some epistemes or units of knowledge constituted by common sensibilities that allow them to contribute to the production of policy-relevant claims within their domain".[18] These professionals choose, according to Hernández, "to internalise a belief in the authority of the community itself", thus "creating a 'feedback loop' of mutual reinforcement, one that reinforces the choices already embodied within the structure of international law".[19]

Significant overlaps exist, of course, between communities of legal practice and those of legal discourse; as suggested by Janik, "the lines between theory and practice are often blurred", since "professors may be appointed as judges, arbiters, or special rapporteurs, while legal advisors or members of courts give lectures, participate in conferences, and

[12] Hernández, *supra* note 10 at 161.

[13] *Ibid.*, at 170.

[14] Pierre-Marie DUPUY, "L'unité de l'ordre juridique international: Cours général de droit international public" (2002) 297 Recueil des cours / Académie de droit international 9 at 205.

[15] Hernández, *supra* note 10 at 184.

[16] Nicolas M. RAJKOVIC, "Rules, Lawyering, and the Politics of Legality: Critical Sociology and International Law's Rule" (2014) 27 Leiden Journal of International Law 331 at 340.

[17] *Ibid.*

[18] Fabian CARDENAS and Jean D'ASPREMONT, "Epistemic Communities in International Adjudication" *Max Planck Encyclopedia of International Law* (April 2020), online: Max Planck Institute https://opil.ouplaw.com/display/10.1093/law-mpeipro/e2425.013.2425/law-mpeipro-e2425#law-mpeipro-e2425-bibItem-48 at para 20.

[19] Hernández, *supra* note 10 at 168.

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engage in academic writing".[20] More generally, "the community of international legal practitioners maintains close ties with the scientific side of the profession, and scholars are … very active in the practice of international law".[21] In modern international legal meta-scholarship, the two communities are, therefore, often lumped together to form broader notions such as "epistemic communities",[22] "communities of practice"[23] *lato sensu* or "interpretive communities",[24] depending on the sociological theme the author wishes to explore. For the purposes of the present contribution, however, a division between the two communities is analytically warranted, digital ecosystems having distinct uses and transformative capabilities for communities of practice and discourse as further analyzed below.

Sure enough, the "games" of legal discourse and practice must take place on a "playing field"; that is, discourse and practices can only reach the material world through concrete communicative, spatial or mediatic channels which allow for the interception, but also the *ex post* conditioning, of meaning. As regards social media in particular, it has been observed that, "[i]ncreasingly, academic discourse communities are mediated in significant part by" them,[25] with the "digital discourse" that emerges from this process [being] characterized by "multimodality", allowing for "new combinations of meaning and interpretation".[26] The discourse-altering potential of digital ecosystems is therefore not limited to matters of textual form or aesthetics; digital ecosystems may, rather, profoundly affect the very substance of what is said, who says it and who listens. Otherwise put, digital ecosystems are inherently capable of tangibly affecting international law shaping.

Before reflecting on precisely how digital ecosystems affect international law shaping, a brief overview of the traditional media of international law shaping is in order. While finding themselves in a declining trend, traditional media remain prevalent today.

II. How do dusty books, press conferences and the bureaucratic redundancies of peer-reviewing fare in the digital era?

A. *Traditional law shaping by discourse communities*

Traditionally, international law shaping by discourse communities had occurred through three key media: the first can be broadly termed as "academic publications", comprising books (monographs or edited volumes), journal articles, case notes, and book reviews. The quantity and quality of work performed through this medium was, and largely remains, the most common measure of academic worth.[27] This, arguably, is a legacy effect of an era

[20] Ralph JANIK, "Interpretive Community 2.0: How Blogs and Twitter Change International Law Scholarship" (2021) 81 Heidelberg Journal of International Law 841 at 842, 843.

[21] Santiago VILLAPLANDO, "The 'Invisible College of International Lawyers' Forty Years Later" (2013) 3 ESIL Conference Paper Series at 6.

[22] See e.g. Peter HAAS, "International Environmental Law: Epistemic Communities" in Daniel BODANSKY, Jutta BRUNÉE, and Ellen HEY, eds., *The Oxford Handbook of International Environmental Law* (Oxford: Oxford University Press, 2007, 791–806).

[23] See e.g. Jutta BRUNNÉE and Stephen J. TOOPE, *Legitimacy and Legality in International Law: An Interactional Account* (Cambridge: Cambridge University Press, 2010).

[24] See e.g. Michael WAIBEL, "Interpretive Communities in International Law" in Andrea BIANCHI, Daniel PEAT, and Matthew WINDSOR, eds., *Interpretation in International Law* (Oxford: Oxford University Press, 2015).

[25] Deoksoon KIM and Oksana VOROBEL, "Discourse Communities: From Origins to Social Media" in Stanton WORTHAM, Deoksoon KIM, and Stephen MAY, eds., *Discourse and Education* (Springer, 2015) at 5.

[26] *Ibid.*

[27] Which, for full disclosure, partially explains why the present contribution is published in an academic journal rather than being presented as a social media thread or a series of blog posts (the other part of the explanation being the spatial restrictions posed by such media).

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when information was territorial and fragmented; one's ability to locate, describe, and systematize information was, in such a context, justifiably considered a desirable intellectual asset. The predominance of this medium, however, produced, and continues to produce, significant "side-effects" on the substance of academic work.

Indicatively, as noted by Duval, "[b]eing sovereign over the legal texts enabled scholars to rely on their main comparative advantage: their ability to refer to almost inaccessible textual sources and claim authoritative knowledge of the law when making their arguments".[28] Before the era of open-access information, debunking or even cross-checking intellectual authority was particularly challenging, while "the prestige of legal academics was a function of the depth of their personal access to a wide range of references",[29] which was by no means an objective and substance-focused metric.

Moreover, as a result of the predominance of traditional academic publications, references/citations were, and still are, overemphasized as a measure of academic worth. This fact "dehumanizes" intellectual accreditation, results in a strive for quantity over quality (the colloquial "publish or perish" mantra), and may lead to biases toward and against specific languages, population groups, and databases.[30]

The dominance of traditional academic publications has further resulted in an antiquated and relatively untransparent review process overall. Often, with the comfort of anonymity, reviewers have no incentive to control their biases, such as their distaste of a given methodological approach or fear of intellectual competition. The reviewing process is, moreover, lengthy, given the absence of financial incentives and the engagement of full-time academics with hectic schedules; due to such delays, the ideas presented in an article are widely known before publication, such as through conference presentations, email lists, blogs, and other digital ecosystems, which have been developed precisely "to take advantage of needs in the marketplace not being met by traditional publishers".[31]

Lastly, even in the age of digital journals, the final product tends to mimic the aesthetics of traditional books and be devoid of interactive features. At most, academic publications feature tables, figures, and other "graphical paraphernalia" which require "intratextual references together with citations to demonstrate the novelty of claims and their relationship to past work", whereas "blogs are written for an audience which expects less citational and diagrammatic support for claims".[32] The design features of blogs allow citations "to be embedded in the structure of the medium itself, through hyperlinks to research papers, images and video clips".[33] The immediacy of this citational method has the potential to increase the educational value of the relevant publications, compared to the de-aestheticized from they take in traditional media.

Lastly, to reiterate, the "technology" of academic journaling emerged at a time when systematization, ordering, and dissemination constituted intellectual priorities. This overarching purpose, in turn, had an effect on the substance of academic production; to illustrate, as disclosed to O. Spijkers and D. Van der Meersche by certain interviewees, including a former editor of the Netherlands Yearbook of International Law, among the

[28] Antoine DUVAL, "Publish (Tweets and Blogs) or Perish? Legal Academia in Times of Social Media" (2018) 23 Tilburg Law Review 91 at 96.

[29] *Ibid.*, at 95.

[30] For a comprehensive critique the h-index and bibliometrics at large see Yves GINGRAS, *Bibliometrics and Research Evaluation: Uses and Abuses* (Cambridge, MA: MIT Press, 2016).

[31] Danny KINGSLEY, "The Journal is Dead, Long Live the Journal" (2017) 15 On the Horizon 1 at 7.

[32] Hang ZOU and Ken HYLAND, "Reworking Research: Interactions in Academic Articles and Blogs" (2019) 21 Discourse Studies 1 at 23.

[33] *Ibid.*

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driving forces of said journal in its inception was "to organise international law in a specific way that could then also be adopted by others"; the driving ambition behind this was the "emergence of 'shared knowledge' and substantive 'convergence' facilitated by particular textual techniques of classifying, ranking and representing".[34] It can thus be argued that the orderly or system-oriented ecosystem of traditional academic publications had the potential to condition the overall radicality of intellectual production.

The second traditional medium is that of in-person academic events, comprising chiefly conferences and book presentations. Events of this nature present an occasion for international legal academics to subject their work to immediate scrutiny before a critical mass of their peers, and to disseminate it before the direct makers of international law. In practice, however, such events also serve as self-promotion and networking opportunities.[35]

The third traditional medium of law shaping by discourse communities is the contact which international legal academics often maintain with direct stakeholders. Senior academics indeed often work, or are otherwise closely associated, with governments and international organizations, thereby developing personal capital, familiarity, and relationships with decision-makers, as well as a consequent form of leverage over and within communities of practice.[36]

B. *Traditional law shaping by communities of practice*

Prior to the advent of digital ecosystems, the pool of law-shaping media utilized by communities of practice featured a mix of opaque practices, on the one extreme, and excessively ceremonial or antiquated processes, on the other. Besides the ordinary diplomatic means of norm production, such as participation in treaty negotiations, governments shaped international law through press conferences or announcements in which they expressed direct

[34] Otto SPIJKERS and Dimitri VAN DEN MEERSSCHE, "'There Was an Idealism that This Information is Useful' – The Origins and Evolution of the Netherlands Yearbook of International Law" in Otto SPIJKERS, Wouter G. WERNER, and Ramses A. WESSEL, eds., *Netherlands Yearbook of International Law* (Springer, 2019) at 247.

[35] Mark Featherstone suggests, for instance, that "[t]he conference is a space of debate and democratic engagement, but it is also a professional event for those who present their work in order to update their CV, disseminate findings from projects, and network with a view to career advancement. In other words, the conference is simultaneously a space for friends to enter into true debate and actually engage in open communication, and strangers to exchange cognitive commodities, but never really open themselves up to each other, because self-transformation is never the object of commodity exchange that instead projects the possibility of change into the thing – in this instance, change takes place through the improved CV, for example". Mark FEATHERSTONE, "The Politics of the Academic Agora" (2016) 52 Sociologicky Casopis-czech Sociological Review 423.

[36] Mikkel J. Christensen has articulated this trend in the field of international criminal law, see Mikkel J. CHRISTENSEN, "Academics for International Criminal Justice: The Role of Legal Scholars in Creating and Sustaining a New Legal Field", iCourts Working Paper Series, 2014. Mikkel J. Christensen provides the notable example of James B. Scott, "whose career, after having graduated from Harvard, built on a constant reinvestment in academia and state service where he served in different capacities including work in the Hague Peace Conferences on which he also published. Serving as president of the American Society of International Law and Editor-in-Chief of the American Journal of International Law, his legal as well as diplomatic credentials were well established before the Great War. Constantly moving between state service and academia cumulatively strengthened his position in both domains, an influential double role that Dr. Scott supplemented with his position as Director of the Division for International Law that was part of the sizable Carnegie Endowment for International Peace crated in 1910. As director Scott helped fund numerous conferences and publications in the field as well as a range of fellowships that became a central stepping stone for many scholars who would go on to occupy chairs in international law. The endowment also actively supported the creation of the Permanent Court of International Justice (PCIJ). After having served on the commission to establish an international criminal tribunal to deal with the crimes of the Kaiser, an initiative the US supported while remaining opposed to the idea of a permanent court, Scott published significant works precisely on international criminal law" (at 11).

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normative positions or political positions of relevance to international law, manifested *opinio juris* and state practice and, occasionally, even made formal unilateral declarations.[37]

International organizations, in turn, relied extensively on public positions, which they expressed *inter alia* through policy papers, to shape international law by influencing its direct makers. H. Alvarez, in his famous systematization of the effects of IOs on the formation of traditional international law, concluded that norm shaping by IOs can even challenge the theory of formal sources in customary international law,[38] whereas others, such as K. Daugirdas, have argued that, by conducting "careful and independent" studies on given matters and taking normative positions as a result, IOs may assist in the identification of *opinio juris*.[39]

International lawyers also affected norm shaping, albeit in subtler ways. They capitalized primarily on their informal contacts with stakeholders to advance normative positions or influence normative developments, in addition to producing academic work to vest their professional agendas with a veneer of scientific legitimacy. This, in the terminology of S. Quack, occurred through the assumption of multiple, and often conflicting, roles: lawyers acted as disseminators and setters of standards,[40] as well as public experts and lobbyists;[41] in these capacities, they "engage[d] in translation, editing and recombination activities to soften 'hard laws' and make them applicable to specific cases. Professionals also play[ed] a central role in the gradual 'hardening' of soft rules, that is, their de facto standardization

[37] As remarked by the ILC in its Draft Conclusions on the Identification of Customary International Law, states have traditionally manifested *opinio juris* through "public statements …; official publications; government legal opinions; diplomatic correspondence; decisions of national courts; treaty provisions; and conduct in connection with resolutions adopted by an international organization or at an intergovernmental conference", *inter alia*. Their statements can be made in "debates in multilateral settings", "published opinions" by governmental advisers or even through "[a]n express public statement … that a given practice is permitted, prohibited or mandated under international law". See "Draft Conclusions on Identification of Customary International Law, with Commentaries", *Yearbook of the International Law Commission*, Vol. II, Part 2 (2018) (A/CN.4/SER.A/2018/Add.1 (Part 2)), conclusion 10.2 and p. 103, para. 4. For a recent example of a public briefing expressing positions on international law see US Department of State – Briefing of 20 May 2024, online: www.state.gov/briefings/department-press-briefing-may-20-2024/, interpreting the ICC Statute.

[38] José Alvarez in *The Impact of International Organizations on International Law* (2017): "The law-making activities of these organizations cast doubt on propositions that international law is established only on the basis of the consent of states, emerges only from the three sources of obligation contained in Article 38 of the International Court of Justice (ICJ) Statute, can be easily distinguished on the basis of its clearly binding authority, and can be understood without the need to draw on non-legal disciplines such as sociology, political science, or economics. International law, or at least the part of it produced, interpreted, or enforced by global institutions such as those of the UN system, it turns out, is not a self-enclosed legal regime" (at 345).

[39] See Kristina DAUGIRDAS, "International Organizations and the Creation of Customary International Law" (2020) 31 EJIL at 224, discussing the UN and international humanitarian law.

[40] Sigrid QUACK, "Legal Professionals and Transnational Law-Making: A Case of Distributed Agency" (2007) 14 Organization at 654: "Dissemination occurs due to interorganizational mobility of lawyers … and interaction between lawyers in the course of their work … International law conferences organized by prestigious law schools and publications in professional journals also contribute to … standardization in transnational law-making. With the support of business law firms, model contracts and master agreements for transnational business transactions are often developed by international business associations … and international bar associations". Critically, this process is "driven by the commercial interest of international law firms to find solutions for their customers".

[41] *Ibid.*, at 655. Sigrid Quack refers in this regard to deliberate strategic efforts of "'institutional entrepreneurs' … to design new laws or change existing ones", adding that "[l]egal professionals, law firms and international bar associations act as initiators or supporters of such institutional strategies. Law firms engage in such institutional projects in their own commercial or jurisdictional interest and in their clients' interest". Further, these actors engage in "diagnosing problems, framing issues, negotiating solutions, and mobilizing policy networks".

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and transformation into written law",[42] which they would later utilize in their professional setting.

In international courts and tribunals, lastly, law shaping occurred directly through the production of jurisprudence, as well as indirectly by "unseen" actors (such as tribunal secretaries) who influenced decision-makers through their pre-drafting of decisions or their general professional and personal contact with actual decision-makers.[43]

III. The "social mediatization" of international law shaping

A. Law shaping media employed by discourse communities

As social interactions at large have increasingly moved to digital ecosystems, academic interactions have naturally followed. Although, to the author's knowledge, there are no studies documenting this trend specifically in the sphere of international law, there is no credible reason to assume that international legal academia would constitute an exception to the "social mediatization" of academia more generally. Plainly, as noted by Duval, "[l]aw and academia are not immune from technological changes; they will be, and already are, affected by the most disruptive innovation in the world of communication since the invention of the printing press";[44] this is certainly true of international law, which by its very nature necessitates a delocalized/globalized "playing field". C. Stahn and E. De Brabandere, in this light, have spoken of a "rise of new social media" in international law and feel that "the art of blogging might in the future become one of the necessary skills" of international legal scholars.[45]

One of the most popular media utilized by international legal discourse communities is indeed that of blog posts. While blogs were once thought of as repositories of personal memoirs, they have by now achieved high levels of sophistication, while the perspectives typically expressed in them have gradually become less personalized. The key features distinguishing blogs from open-access journals are their interactivity, the simplicity and quickness of the review process they entail, as well as the brevity, frequency, and informalized tone of most contributions they feature.

Notwithstanding the substitution of blogs by social media in several aspects of social life, academia continues to see steadily high levels of interaction through blogs. International law blogs, in particular, have proliferated in the past decade; they can now be broadly categorized into those that are general and specialized, with general international law blogs featuring a mix of commentaries on decisions or normative/jurisprudential developments, essays, and event announcements, and often being affiliated with publishing houses and journals.[46] In turn, specialized blogs may either be limited to specific subsets or issue-areas of international law or prioritize publications espousing a given methodology or theory. Specialized blogs may also target their immediate audience and feature a limited pool of contributors.[47]

A second digital medium increasingly employed by international legal discourse communities is that of social media platforms. According to a categorization offered by

[42] *Ibid*., at 659.

[43] As noted by Anne Sanders and Nina Holvast, "[t]he content of [secretary] assistance to judges can reach from acting as a 'sounding board' for the judge's ideas, to conducting research and performing administrative duties to the drafting of decisions and participating in deliberations". Anne SANDERS and Nina HOLVAST, "Empirical Studies on the Role and Influence of Judicial Assistants and Tribunal Secretaries" (2020) 11 International Journal for Court Administration 1 at 1.

[44] Duval, *supra* note 29 at 92.

[45] Carsten STAHN and Eric DE BRABANDERE, "The Future of International Legal Scholarship: Some Thoughts on 'Practice', 'Growth', and 'Dissemination'" (2014) 27 Leiden Journal of International Law 1 at 5 and 7.

[46] See e.g. EJIL: Talk! (www.ejiltalk.org/); Opinio Juris (https://opiniojuris.org/); Völkerrechtsblog (https://voelkerrechtsblog.org/).

[47] See e.g. AfronomicsLaw (www.afronomicslaw.org/); Kluwer Arbitration Blog (https://arbitrationblog.kluwerarbitration.com/); International Economic Law and Policy Blog (https://worldtradelaw.typepad.com/).

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N. J. De Vries and J. Carlson, social media posts can have a functional, hedonic, social or "co-creative" value.[48] Compared to Facebook or image/video-based media (such as Instagram and TikTok), where posting is mostly hedonic, X (formerly "Twitter") has a tradition of being used extensively, if not primarily, for sociopolitical discourse. Moreover, compared to LinkedIn, which features posts geared toward professional self-promotion, on their face, tweets by the participants of international legal discourse communities feature informative and less self-centred content. However, as further discussed in section V below, ultimately, such tweets often serve to showcase one's intellectual skills and market oneself as forming part of a discourse sub-community.

Besides X, LinkedIn can also be used as a platform for limited academic commentary; usually, however, LinkedIn posts provide but a snapshot of, or invitation to read, a larger contribution, featuring no primary intellectual work per se. What is more, while rarely put to pure academic use, social media platforms that tend to feature functional or hedonic content, such as Facebook or Instagram, occasionally feature posts/stories advancing propositions of a mixed academic/broader socio-political content.

A third digital medium increasingly employed by international legal discourse communities is that of video conferencing platforms. The ability of such platforms to impact international law shaping has only recently become evident, as it was not until the COVID-19 pandemic that conferences largely moved to the digital sphere. The key difference between in-person academic events and video conferencing is that the latter medium strips events from their physical "side features", such as propensity for networking and lobbying, at least so long as the development and utilization of meta-verse features remains at a primal level. Moreover, digital conferences have resulted in an increased pool of eligible participants, whether due to economic accessibility or the relative psychological comfort of speaking from home.

A fourth and final digital medium that must be listed for completeness is that of online libraries and databases. This medium is one of dissemination of academic content and not of direct production; as such, it is of limited relevance to the present contribution.

B. Law shaping media employed by communities of practice

Communities of international legal practice have also steadily espoused digital ecosystems as their primary means of law shaping. A key medium employed by lawyers, in particular, is that of newsletters, namely regular summaries of statutory or jurisprudential developments, designed to either showcase the firm's expertise or advertise a legal proposition, with the ultimate objective of attracting clients.[49]

Relatedly, lawyers also produce and disseminate more to-the-point "client alerts", namely emails addressed to existing clients or announcements on their websites and/or social media that identify a given factual development and seek to inform clients of their ability to seek redress, in case such a development affects their interests. Such alerts are particularly common in the case of governmental measures challengeable under Bilateral Investment Treaties.[50]

[48] Natalie J. DE VRIES and Jamie CARLSON, "Examining the Drivers and Brand Performance Implications of Customer Engagement with Brands in the Social Media Environment" (2014) 21 Journal of Brand Management 495.

[49] Studies show that newsletters by law firms are also consumed by other lawyers, as sources of "current awareness" about the law (see Stephanie ELLIS, Stephann MAKRÍ, and Simon ATTFIELD, "Keeping Up With the Law: Investigating Lawyers' Monitoring Behaviour" (2014) 115 New Library World at 7.

[50] An often-discussed example is that of King & Spalding's client alert in the wake of the Arab Spring, suggesting options for recovery under investment treaties in Libya: King & Spalding, "*Client Alert – Crisis in Libya: What Legal Options are Available to Oil and Gas Companies?*" (17 May 2011), online: Lexology www.lexology.com/library/detail.aspx?g=82da0933-cbd2-44a8-964a-28579a95ed35.

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International organizations are also increasingly exploring digital ecosystems, making, in particular, use of social media and video-conferencing platforms. Indicatively, the reader may have come across various TikTok videos uploaded by the International Committee of the Red Cross official account,[51] or read tweets by intergovernmental organizations (IGOS) and non-governmental organizations (NGOs) justifying policy choices to the general public, condemning a given practice as inconsistent with international law or setting an agenda for future normative developments.[52] Short commentaries by NGOs on recent jurisprudence or normative developments, similar to "client alerts", are also commonly published on the respective organizations' websites.[53] Even international courts have espoused the practice, with some of them scoring more than 100 tweets per month[54] while also being active on YouTube.

Lastly, like international organizations and courts, governments have also been increasingly using social media to announce policies and express positions on matters related to international law, in line with the broader trend toward "twiplomacy"[55] in international relations. Central governments, heads of state, embassies and sub-statal entities that maintain X accounts and are, often, highly "wired", now indeed abound; as documented in an empirical study on "twiplomacy" conducted in 2020 by BCW, 98 percent of UN members had a presence on X[56] whereas, between 2012 and 2020, there had been a 900 percent increase in the number of tweets by governmental accounts.[57]

Against this background, it is even argued that, as an expression of state will, tweets from official accounts can provide evidence of state practice and *opinio juris*,[58] whereas at least one international adjudicatory body, namely the World Trade Organization (WTO) panel in *Saudi Aradia—IPR*, has had recourse to tweets by reasoning that, "under general international law principles of state responsibility, actions at all levels of government … are attributable to the State".[59]

IV. Gains and losses: between sensationalism and empowerment

A. *Gains and losses for discourse communities*

In recent years, much enthusiasm can be noted among international legal academics in respect of the "empowering" abilities of digital ecosystems. The source of this enthusiasm is the perceived potential of such ecosystems to enhance the accessibility of legal sources and inclusivity of discourse communities.[60] The author would argue that this enthusiasm is, for the most part, justifiable. Digital ecosystems indeed enhance technical or economic

[51] Available at www.tiktok.com/@icrc.

[52] See e.g. Human Rights Watch, "A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution" (27 April 2021), online: Human Rights Watch www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution.

[53] See e.g. the IISD's Investment Treaty News (available at www.iisd.org/itn/en/resources/).

[54] Lorenzo GRADONI, "They Tweet Too: Sketches of International Courts' Digital Lives" (2022) 92 Questions of International Law 5 at chart 5.

[55] James A. GREEN, "The Rise of Twiplomacy and the Making of Customary International Law on Social Media" (2022) 21 Chinese Journal of International Law 1; Maja SIMUNJAK and Alessandro CALIANDRO, "Twiplomacy in the Age of Donald Trump: Is the Diplomatic Code Changing?" (2019) 35 The Information Society 13. The term "twiplomacy" was coined in a 2011 study by Treebranding.com mapping networks of Twitter diplomacy, online: www.slideshare.net/treebranding/twitter-diplomacy-tree-branding.

[56] "Twiplomacy Study" *BCW* (20 July 2020), online: BCW www.twiplomacy.com/twiplomacy-study-2020.

[57] As reported by James A. Green based on a similar study carried out by BCW in 2012, see Green, *supra* note 55 at 7.

[58] Green, *supra* note 55 at 48.

[59] Panel Report, *Saudi Arabia—Measures concerning the Protection of Intellectual Property Rights*, para. 7.161.

[60] This enthusiasm is partially shared, e.g., by Duval (*supra* note 29, at 97 and 98).

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accessibility, on the one part, due to open access policies, and "intellectual" accessibility, on the other, due to the limited length of the publications they feature and the informality of the writing style these publications employ. Inclusivity, in turn, is a function precisely of informality and limited length, seeing as these features encourage publications by non-native English speakers and young scholars, thereby widening the pool of participants in international legal communities of discourse. Inclusivity is, moreover, a function of the simplicity and disintermediation of the reviewing process followed by blogs; even where blogs are affiliated with established journals, they are not strictly "policed" by them and generally do not follow their writing formalities. Further, even where the reviewing process is formalized and traditional publishing houses are involved in it, there is an unwritten convention according to which young or marginalized voices and established academics must be placed on equal footing.

Empowerment is also manifested in the reduction of entry barriers and the opportunity such reduction provides for young scholars to test their hypotheses in a "cosy" and inviting intellectual environment, devoid of the quasi-ritualistic formalities of journals and books. While young scholars might lack the material resources or experience to fully substantiate (or the linguistic tools to properly develop) certain propositions through traditional means of publication, they might feel comfortable expressing them in a blog or via a tweet that takes the form of an experimental "insight"; from the production of this insight and potential feedback received on it, the young scholar may then gather the courage and intellectual tools required to produce a full-scale, traditional publication.

An additional empowering feature of digital ecosystems is their potential to enhance legal pluralism. By increasing the pool of eligible members of existing legal discourse communities, challenging traditional writing conventions and increasing the transparency of the review process (which is not necessarily anonymous and tends to be less intrusive than in established journals), digital ecosystems provide a voice to a plurality of legal theories, methodological approaches and legal cultures.

Besides affecting the identity of the voices that are heard, digital ecosystems may also condition the aesthetic features of academic work. Indeed, while interactive features such as hyperlinks, images, and reply submissions are not unique to blog posts and tweets, they do not form part of the established culture of academic journals. Even where journals do feature hyperlinks, the latter invariably leads to judgments or academic publications and not to "taboo" informal sources such as popularized science websites or YouTube videos, as is occasionally the case with blog posts. Images are, in turn, typically restricted to graphs or tables, whereas reply submissions are not immediate and tend to be written in a dry, formal style, prejudicing the vividness of the relevant exchanges. In the same vein, in traditional publications, few deviations from certain conventions relating to the formality of the language style and overall tone are permitted; in blogs, there being fewer constraints of this nature,[61] writers may devise more colourful textual and linguistic schemata.

On a related note, several commentators have praised digital ecosystems for their ability to "humanize" the process of academic production, in particular by normalizing emotion-sharing and connecting academics with the broader public. Indicatively, B. Britton, C.

[61] The author can think of at least two blog posts the very title of which might have raised the eyebrows of peer-reviewers in some journals: Jean D'ASPREMONT, "Favourite Readings 2021 – Canonization, Toleration, Incarnation, and Masturbation" (2021), online: EJIL: Talk! www.ejiltalk.org/favourite-readings-2021-canonization-toleration-incarnation-and-masturbation/; Fuad ZARBIYEV, "Of Bullshit, Lies and 'Demonstrably Rubbish' Justifications in International Law" (2022), online: Völkerrechtsblog https://voelkerrechtsblog.org/of-bullshit-lies-and-demonstrably-rubbish-justifications-in-international-law/. Generally, there is more tolerance in blogs toward language capable of eliciting feelings of provocation or shock. These feelings, which international legal academia generally lacks, can contribute to the vividness, desterilization and genuineness of the readers' engagement with an author's proposition.

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Jackson, and J. Wade note that "[o]n social media, our frequent interactions are not only with fellow academics, but with journal editors, policy makers, journalists, school teachers, alumni, students, pupils, parents, people in business and individuals from industry".[62] They add that academics can now "vent frustrations, share personal victories and setbacks, and seek out role models and voices who may otherwise be hidden or not heard".[63] They, lastly, note that academics using social media to share selfies are "perceived as warmer, more trustworthy and no less competent than their non-selfie sharing colleagues".[64]

A final form of empowerment is found in the increasing popularity of video conferencing platforms. As previously stated, with the move of international legal events to the virtual sphere comes a degree of transparency and de-"lobbification" of academia, which in turn leads to the latter's partial disconnection from interest groups and focus on genuine intellectual production.

The above-discussed empowering features of digital ecosystems impact the shaping of international law in several ways. For instance, as famously suggested by Duncan Kennedy, traditional legal education legitimizes hierarchy by "justifying the rules that underlie it, and provides it a particular ideology by mystifying legal reasoning".[65] Due to their demystifying or, as Duval puts it, desacralizing potential,[66] digital ecosystems can contribute to the reshaping of ideologies and deconstruction of hierarchical preconceptions about the ways in which international law is or ought to be shaped.

Moreover, as a "communicative medium"[67] or a "language for international relations",[68] international law is "more effective when it is audible, visible, and, most importantly, easily intelligible".[69] Naturally, the better a rule is understood in its existing form, the more efficiently it can be operationalized, and the easier it becomes to identify "entry points" for reforms.

In the same vein, the aesthetic features of digital ecosystems affect law shaping since they condition the law's very perception, which is, of course, precursive to its constitution. In Pierre Schlag's famous words, "[t]o be under the sway of an aesthetic is not only to think in a certain way, but also to perceive law in a certain way, and even more, to encounter certain tasks and perform certain kinds of actions".[70]

Digital ecosystems also have a disruptive or reconstructive potential. L. Kulamadayil suggests in this regard that "[d]isruptions of the normal ways in which law is taught and practiced … tend to trigger existential fears, particularly among international legal academics who, finding themselves frequently accused of not being 'real lawyers', already tend to overemphasize the juridical elements of their professional identity to delineate themselves from politics".[71] With this in mind, digital ecosystems, as *par excellence* disruptors, can free international lawyers from the pressures of professional existentialism and heteronomy. Thereby, they can "de-fantasize" international law shaping, that is to say, prompt

[62] Ben BRITTON, Chris JACKSON, and Jessica WADE, "The Reward and Risk of Social Media for Academics" (2019) 3 Nature Reviews Chemistry 459 at 459.

[63] *Ibid.*

[64] *Ibid*., at 461.

[65] Duncan KENNEDY, "Legal Education and the Reproduction of Hierarchy" (1981) 32 Journal of Legal Education 591 at 607.

[66] Duval, *supra* note 28 at 92.

[67] Dino KRITSIOTIS, "The Power of International Law as Language" (1998) 34 California Western Law Review 397 at 404.

[68] *Ibid*., at 407.

[69] Lys KULAMADAYIL, "Ableism in the College of International Lawyers: On Disabling Differences in the Professional Field" (2023) 36 Leiden Journal of International Law 549 at 556.

[70] Pierre SCHLAG, "The Aesthetics of American Law" (2002) 115 Harvard Law Review 1047 at 1117.

[71] Kulamadayil, *supra* note 69 at 556.

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international lawyers to shift their range of focus away from the profession's self-imposed grandiose themes, resulting in better-calibrated or "reality-conscious" engagement with international law.

Relatedly, Kulamadayil also suggests that publishing "in outlets associated with excellence, is still used as the most important criterion for measuring the competence of a legal academic. The pressures of conforming to this habitus of professional recognition" lead to the prioritization of "publishing variations of the same analysis and arguments".[72] Similarly, certain journals "receive so many submissions that publishing with them is competitive and requires one to make a contribution of general interest (majoritarian social recognition). This incentivizes publishing on popular subjects".[73] By alleviating pressures of this kind, digital ecosystems lead to better variation as regards the issue-areas of international law which see the lights of practice and discourse.

Finally, as the pool of international law "shapers" expands through digital ecosystems to include previously underrepresented social groups and marginalized ideas, traditional law-shaping processes become increasingly amenable to constructive contestation, which is synonymous to normative progress.

While the empowering features presented above are compelling, at the opposite side of the spectrum lies an equally wide range of risks, which can be broadly placed under the umbrella of a familiar plague of our times: that of sensationalism.

Specifically, as noted by Britton, Jackson, and Wade, "[s]ocial media increases the sharing of ideas, and the faster and cross cultural aspect of these interactions means that people may see more content that causes individual moral outrage".[74] The discourse may thus easily become adversarial in nature; as stated by Janik, "[t]he absence of many of the social restraints operating in the 'real world' may lead to a collapse of even minimum standards of civility", resulting in "hostility instead of benevolent interpretation".[75] Online academic criticism can even be "weaponized", as lamented by A. Stein, particularly by graduate students who "often see [established academics] who are riding into [their] golden years with security as privileged in ways they will never be, and those resentments spill out into the digital public sphere".[76] Further, as cautioned by D. Lupton, by engaging in academic commentary on social media, we risk "inflaming sensitivities or appearing unprofessional by providing too much personal detail".[77] Finally, D'Aspremont cautions that, "[o]nce written and thrown to the web, such ideas, emotions or statements ceased to be within its author's control. Because of the magnifying effect of the web, any misstep can then take very harmful proportions for its author".[78] To put it more directly, digital ecosystems leave authors more exposed to humiliation and *ad personam* attacks, which can have significant mental health repercussions, particularly for younger and more vulnerable academics. Needless to say, mental health affects the lucidity of legal reasoning and quality of academic output, undermining the author's law-shaping potential.

[72] *Ibid*., at 553.

[73] *Ibid*., at 556.

[74] Britton, Jackson and Wade, *supra* note 62 at 461.

[75] Janik, *supra* note 20 at 850.

[76] Arlene STEIN, "Social Media has Changes Academic Culture – For the Worse" *Public Seminar* (14 July 2021), online: https://publicseminar.org/essays/social-media-has-changed-academic-culture-for-the-worse/.

[77] Deborah LUPTON, "'Feeling Better Connected': Academics' Use of Social Media" (2014) *Canberra: News & Media Research Centre, University of Canberra* online: University of Canberra www.canberra.edu.au/about-uc/faculties/arts-design/attachments2/pdf/n-and-mrc/Feeling-Better-Connected-report-final.pdf at 31.

[78] Jean D'ASPREMONT, "In Defense of the Hazardous Tool of Legal Blogging" *EJIL: Talk!* (2011), online: EJIL: Talk! https://www.ejiltalk.org/in-defense-of-the-hazardous-tool-of-legal-blogging/.

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On a similar note, as observed by Stahn and De Brabandere, since digital ecosystems are designed to "place emphasis on marketing features", they can "enhance egocentricity and personality cults and lead to greater conflation between quantity and quality".[79] While commenting or posting within an ecosystem that is inherently conducive to self-centredness, academics may indeed oscillate between marketing themselves and their ideas; in consequence, recipients of their work may perceive their personality as "overly entrepreneurial or self-aggrandising",[80] and discard their work outright. Law shaping then necessarily becomes imperfect, suffering from significant information biases.

Another known pathology of digital ecosystems, and particularly social media, is their "echo chamber" effect. Positive feedback by like-minded peers on social media, combined with the manual or algorithmic alienation of non-like-minded individuals, may provide authors with a false sense of validation and empowerment, steering them toward counter-productive intellectual directions and encouraging them to "talk to themselves". While it has been argued that "such tendencies can also be observed in the traditional academic sphere",[81] or that "political interest and media diversity … [may] help people avoid the threats of echo chambers",[82] traditional media of academic expression are, still, less susceptible to the echo chamber effect *by design*; simply, they employ neither persuasive technology nor algorithmic configurations more generally. What is more, on social media, the reader may develop an understanding of an author's sociopolitical views prior to engaging with their work, and decide to refrain from any engagement with said work *in limine*; biases, in other words, do not necessitate meaningful exposure to the author's actual work. Social media posts are, in this light, even more self-marginalizing than publications in niche or closed-club avenues; the choice of social media can thus undermine the quintessence of international legal academia, namely its communicative function. And, naturally, with decreased communicative reach comes decreased contribution to law shaping.

Brevity and spontaneity represent two additional pitfalls of digital ecosystems. The culture and spatial configuration of tweets, and even blog posts, permits the production and dissemination of work lacking in-depth research and cross-validation.[83] Once such work is debunked or challenged, the author's public exposure may result in non-credible and intellectually dishonest attempts to defend the original proposition. Relatedly, such qualitative shortcomings may serve to further alienate legal practice from legal theory, as communities of practice may perceive communities of discourse to be increasingly over contentious, abstract, and over-recycled. This can then "contribute to the image of international law as an arbitrary and politicised science";[84] the more its theoretical structures are contaminated by infighting, abstractness, and intellectual saturation, the more international law risks losing its potential as a reliable code of communication, thereby accelerating or failing to arrest the current trend toward the de-multilateralization and de-stabilization of international relations.

[79] Stahn and De Brabandere, *supra* note 45 at 8.

[80] Lupton, *supra* note 77 at 31.

[81] Janik, *supra* note 20 at 850.

[82] Elizabeth DUBOIS and Grant BLANK, "The Myth of the Echo Chamber" *Oxford Internet Institute* (9 March 2018), online: Oxford Internet Institute www.oii.ox.ac.uk/news-events/the-myth-of-the-echo-chamber/.

[83] According to an extreme version of this concern, in the foreseeable future, it may become possible for academics in international law to "self-publish", see Roger ALFORD, "Self-Publishing Legal Scholarship" *Opinio Juris* (2011), online: Opinio Juris https://opiniojuris.org/2011/04/12/self-publishing-legal-scholarship/. In more moderate terms, Larissa van den Herik expresses the view that "the odds of the cyber age seem not to be favourable to traditional law journals", see Larissa VAN DEN HERIK, "Introduction: LJIL in the Age of Cyberspace" (2012) 25 Leiden Journal of International Law 1 at 5.

[84] Janik, *supra* note 20 at 866.

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In this sense, the reassuring thought expressed by D'Aspremont in 2011 that "legal blogging is neither meant to be proper legal scholarship nor does it seek to replace it", such that "[p]osts on blogs do not claim to be long matured thoughts benefiting from hindsight",[85] has withstood the test of time. In fact, against D'Aspremont's wish that "legal blogging should not be rewarded or count for career-advancement",[86] blogging, tweeting, and even having sufficient followers on X, have all steadily risen to the level of unofficial "meta-metrics" of academic worth. Moreover, as noted by Janik, blogs have by now "sent agorae on current legal events (such as the ones by the American Journal of International Law) to the deathbed or at least made them less relevant. By the time of their publication, everything might have been said already, albeit not by everyone".[87] Thirst for speed is, importantly, not limited to commentaries on "recent developments"; academia at large has become increasingly susceptible to "founder forces", with the internet's magnifying effect rendering the work of first movers far more impactful than it once was – so much so that the colloquial mantra could, at this stage, be paraphrased along the lines of "publish first or perish". And if the quality of first movers' output is sub-par, this "original sin" is bound to negatively impact the subsequent production of knowledge, as a result of path dependencies.

Finally, the potential of digital ecosystems to enhance accessibility and inclusivity may be overstated. To begin with, blogs are not immune to intellectual capture by power structures; indeed, the increasing popularity of blogging "may undermine its value on account of the sheer abundance of such outlets",[88] possibly bringing established members of discourse communities back to the forefront as the guardians of quality in a world of intellectual overproduction. In the same vein, "the drive for quality will almost invariably require some filters to be put in place in order to maintain and enhance the reputation of a particular blog",[89] thereby gradually assimilating blogs to traditional media of academic discourse. Lastly, as an indirect form of exclusion, social media require extroversion and "performative" skills, which many authors might not be comfortable with. Relatedly, the fear of being left out of established online communities, and the quantitative fixation on gaining followers and scoring retweets, can impact the mental health of young or generally more vulnerable academics, and with it the quality of law shaping.

B. Gains and losses for communities of practice

The use of digital ecosystems of international law shaping by communities of practice has, in the author's view, but two advantages: first, it gives voice to a wider pool of states, thereby contributing to the genuine "globalization"[90] of international law; and second, as noted by C. Duncombe, "[t]he in-the-moment speed of communication through social media necessarily breaks with bureaucratic practices that often constrain communication between diplomats and states".[91] On the other hand, digital ecosystems present a multitude of risks.

Specifically, as observed by J.A. Green, "[a] notable proportion of State communications are now transmitted directly to millions of individuals … As a result, there have been changes to the way that States tailor (some of) their communications, and thus to

[85] D'Aspremont, *supra* note 78.

[86] *Ibid.*

[87] Janik, *supra* note 20 at 858.

[88] Cally GUERIN, Susan CARTER, and Claire AITCHISON, "Blogging as Community of Practice: Lessons for Academic Development?" (2015) 20 International Journal for Academic Development 212 at 220.

[89] Duval, *supra* note 28 at 98.

[90] In the sense of the comparativism championed by Anthea Roberts (e.g. in Anthea ROBERTS, *Is International Law International?* (2018)) and espoused by the undersigned author.

[91] Constance DUNCOMBE, "Twitter and Transformative Diplomacy: Social Media and Iran–US Relations" (2017) 93 International Affairs 545 at 562.

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the character of those communications".[92] Communications now adopt an increasingly informal tone, heightening the risk of misinterpretation due to the "difficulty of deriving legal meaning and intent from often short, informal, and instant statements rather than considered official pronouncements".[93] Besides the danger of misinterpretation, more worryingly, digital ecosystems facilitate unfiltered expressions of *actual* state intent, since their immediateness shortens the process of prior reflection. A menacing tweet in the heat of the moment by a state official can, under certain circumstances, even constitute threat of force within the meaning of Article 2(4) of the UN Charter.[94] C. Wang more generally notes that "[t]weets can directly prescribe formal positions and foreign policies. With the ability to control messages, leaders can declare their unfiltered position to the public without consulting or ignoring expert advice"; he then provides the example of a tweet by Donald Trump announcing the withdrawal of US troops from Syria, leading "government officials to frantically clarify the withdrawal details".[95] This is to say that procedural and institutional safeguards can be more easily "relativized" in digital ecosystems.

Moreover, the proliferation of statal and sub-statal social media accounts, as well as the "blurring of the 'personal' and the 'official' due to the widespread use of 'personal' accounts by State officials" causes "uncertainty over whose Twitter accounts, and which tweets from them, might be relevant" to international law shaping.[96]

Lastly, the constant production of client alerts and newsletters, as well as the participation of international lawyers in online discourse communities (blogs and online events), may lead to the conflation of professional agendas and academia, as a result of which law shaping can be more easily infiltrated by power and captured by private interests.[97]

V. Conclusion: controlling the externalities of an irreversible trend

In their reflections on the "future of international legal scholarship" in 2014, Stahn and De Brabandere offered what they titled "not a conclusion", recognizing that the "issues surrounding international legal scholarship require collective attention".[98] They then called for academics to "apply greater vigilance, self-restriction, and care in the production of scholarship, and greater filtering in the selection of publications", adding that "[t]his might require self-censorship by authors and openness towards control by journals".[99] Writing in 2011, D'Aspremont similarly called for "self-restraint by the members of [the blogging]

[92] Green, *supra* note 55 at 8.

[93] *Ibid*., at 48.

[94] See a detailed analysis of this possibility in Francis GRIMAL, "Twitter and the Jus Ad Bellum: Threats of Force and Other Implications" (2019) 6 Journal on the Use of Force and International Law 183.

[95] Chu WANG, "Twitter Diplomacy: Preventing Twitter Wars from Escalating into Real Wars" (Harvard Kennedy School – Belfer Center for Science and International Affairs 2019), online: www.belfercenter.org/publication/twitter-diplomacy-preventing-twitter-wars-escalating-real-wars.

[96] Green, *supra* note 55 at 48.

[97] The fact that law firms seek to shape international law through "epistemized" interventions in the public discourse is confirmed by law firms themselves. For instance, as noted in a study by Law.com International: 'Fieldfisher states on its website: "We closely follow and influence the developments of European law". Herbert Smith Freehills, in the brochure for its Brussels office, states that its lawyers "are active in wider discussions, consultations, international committees and debates about the future development of competition and EU law". White & Case's Brussels base, meanwhile, promises on its website: "We do not just apply the law, we help to shape it". See Linda A. THOMPSON, "Crossing the Line? How Law Firms 'Lobby' EU Institutions in the Shadows" (6 March 2023), online: Law.com International www.law.com/international-edition/2023/03/06/crossing-the-line-how-brussels-law-firms-lobby-eu-institutions-in-the-shadows/?slreturn=20230803131039.

[98] Stahn and De Brabandere, *supra* note 45 at 10.

[99] *Ibid*., at 8.

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community", adding that this "is the best guarantee against overwhelming our poor – and underdeveloped if compared to nanoprocessors – human minds".[100]

Several years later, the undersigned author can hardly conceive a better solution to the negative externalities of academic blogging and tweeting. The empowering potential of these law-shaping media outweighs the tendency to "sensationalize" which they may instil upon their users. Academia has slowly begun to desterilize and genuinely universalize itself, and the benefits of this development are becoming obvious: a plurality of accepted approaches directly challenging legal determinism have risen to the mainstream, *dépassé* conventions inhibiting genuine intellectual production (such as seniority and institutional affiliation) are being contested, and reviewing procedures in traditional publication venues are adapting to the new speeds of digital life and standards of attention-capturing. It is early to tell whether this "empowering" trend has fundamentally reconfigured law-shaping processes, but there are certainly early signs to that effect.

What is more, resisting digitalization in social interactions is a futile endeavour, if not akin to Neo-Luddism. To wit, if the undersigned author were to actively advocate against blogs and social media, a blog post would have been the medium of choice. Moreover, there is merit in D'Aspremont's view that we must refrain from citing blog posts in (traditional) "academic work", and in his anxiety about the dangers of conflating informative and genuinely academic work ("journalism" versus "legal scholarship");[101] and yet, the irony will not be lost on the reader that, even in the present article, references to blog posts abound. These contradictions alone are telling of the degree to which digital ecosystems have permeated academic production, as well as of the futility of fighting such permeation.

In this light, much like in most other aspects of social life dominated by digitalization, the solution in international law shaping is, again, to stay vigilant and mind the pitfalls of digital ecosystems, while taking advantage of their positive features (and – why not? – using them as a source of inspiration to bring about changes across traditional publication venues). What is required is, in other words, a "market" response; that is to say, awareness by the direct "consumers" (academics themselves, as the primary systematisers and disseminators of legal knowledge) of the limits of digital ecosystems and reliance on them exclusively for complementary or superficial research. "Only a joint policy that is informed by the interest of the various stakeholders, including authors, can succeed and be meaningful for the profession as a whole", as remarked by L. van den Herik a decade ago.[102]

The forms and mechanisms of increased awareness and vigilance, naturally, might vary from author to author, such that concrete behavioural prescriptions at the individual level would be of limited value. What is hereby proposed is simply that, on the one hand, the phenomenon of social mediatization of international law shaping by discourse communities be embraced or de-vilified as it were, and on the other, that more attention be brought to the externalities of digital ecosystems on international law shaping by academics, be it through dedicated conferences, edited volumes, journal issues, and even social media threads. Just as the externalities of digital ecosystems in other aspects of social life have by now become

[100] D'Aspremont, *supra* note 81.

[101] *Ibid*. This, indeed, is the root of all evil with respect to the externalities of the shift toward digital ecosystems: that blog posts intended as purely informative or investigative contributions are not identified as such by authors, and may be treated as well-researched, scholarly work by their consumers. Blogs require "a very different orchestration of rhetorical resources", and it thus is not atypical to see writers "adjusting the strength of assertions with appropriate boosting and hedging". HANG Zou and Ken HYLAND, "Reworking Research: Interactions in Academic Articles and Blogs" (2019) 21 Discourse Studies at 26, 27.

[102] Van den Herik, *supra* note 83 at 7.

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an autonomous theme of social study,[103] international legal academics must elevate the problem as seen in their community to the level of a primary, if not quasi-existential, area of *collective* self-reflection, giving it the analytical autonomy it requires.

While axiomatic behavioural suggestions and generalizations are beyond the scope of this paper, it is also worth noting that a set of principles of *individual* self-reflection are made readily apparent by the nature of the externalities described in the previous sections. In particular, prior to publicizing an academic insight on digital ecosystems, it could be worth considering that blogs are ideal when commenting on a recent development, or in case the author wishes to cement her "founder"/"first mover" status or test an original idea before developing it into a full-fledged article.

More generally, if the content of the publication is time-sensitive or purely dialectic, naturally, a blog post would be justified, so long as it is (or can easily be) identified as tentative or experimental. Scrutiny is likely to cede space to constructive collegiality, allowing the author to build upon the idea in a full-fledged publication. In the same vein, it is also crucial to reflect on whether a long thread will afford sufficient room for precision, so that one may express thoughts without resorting to dismissive language and prejudicing the intended statement's accuracy and validity.

On the other hand, tweets and blog posts are ideal when disseminating existing content and advertising an idea expressed in more conclusive/ complete terms elsewhere, as well when posing a genuine question or conducting a mini-survey. Sharing an image or video and eliciting a vivid debate to gather preliminary thoughts constitute, likewise, activities that are better performed on social media than elsewhere. More generally, where marketing constitutes an integral feature of the desired intellectual output, digital ecosystems are appropriate and their widespread use for such a purpose does not entail the externalities discussed in previous sections.

Lastly, while this axiom may appear obvious, the illusion of safe space provided by digital ecosystems makes it worth restating: TBYT – think before you tweet. It is often the case that authors tweet to vent frustrations rather than contributing a genuine thought/sharing information. In so doing, as already discussed, they occasionally employ aggressive linguistic tools or target people, instead of ideas. Moreover, the purpose of a tweet will often be less to convey a message and more to solicit likes and retweets, which resonate back and forth within the echo chamber. Breaking out of such a feedback look and creating a system where tweeting and blogging is less reactionary and more level-headed would require increased TBYT.

For communities of practice, on the other hand, the scope of collective or individual self-reflection is minimal, since there exists neither a system of peer "policing" nor a feasible market-based solution. The advantages of diversifying the pool of norm-producing states must be sought elsewhere, that is, in institutional reform efforts within international organizations, legal capacity building in the developing world and the creation of effective multilingual tools capable of empirically verifying the content of state will across the globe.[104] While there might be advantages in relying on digital ecosystems for diplomacy in the narrow sense, in the author's view, digital ecosystems should simply not be used by governments for law shaping, in light of their various side-effects. Solutions proposed with respect to the moderation of ceremonial, informative, or purely diplomatic tweets, such as

[103] Studies on the impact of social media on macro-economic decision-making, for instance, abound. See, *ex multis*, Abu Muna A. AUSAT, "The Role of Social Media in Shaping Public Opinion and Its Influence on Economic Decisions" (2023) 1 TACIT, 35–44, for a recent example.

[104] Tamar Megiddo suggests bridging the North-South divide in custom identification through big data and data analytic tools, such as web crawlers (Tamar MEGIDDO, "Knowledge Production, Big Data, and Data-driven Customary International Law" in Andrea BIANCHI and Moshe HIRSCH, eds., *International Law's Invisible Frames* (Oxford: Oxford university press, 2021) at 762, 763.

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updating the government's social media guidelines, procedures, and protocols, or mandatory social media training for government officials,[105] do not appear capable of mitigating the risks of legal tweets. Unlike most diplomatic exchanges, a legal exchange will often represent a hard commitment; social media awareness is just too soft a prevention tool when hard commitments are at stake.

As far as the participation of professional lawyers in discourse communities is concerned, the risk of infiltration discussed in section V above is indeed significant, it often being impossible to tell an academic publication on a blog apart from a position paper by a law firm. In terms of mitigating the risk of conflation and consequent infiltration, like Stahn and De Brabandere in 2014, the author of the present contribution does not wish to offer a concrete point of action on the way ahead; instead, the author would invite its readers to consider which methodologies can be employed to "bust" and call out "fake" academia, and hope that such methodologies can be systematically put to use. The author would, moreover, call upon the "gatekeepers", that is, blogs which feature regular contributions by legal practitioners, to stay vigilant for, and carefully filter out, position papers and client baits disguised as academic work. The same gatekeepers should be called upon to help preserve the integrity of academic output by carefully controlling the factual and legal accuracy of rushed blog posts, such as quick reactions to new jurisprudence.

As far as lawyers themselves are concerned, there is limited scope for increased self-reflexivity and restraint, insofar as their tendency to "epistemize" legal marketing is, naturally, driven by subsistence and profit; but so long as there is sufficient agenda-busting in blogs, practitioners might eventually adjust by making use of their own websites or developing digital legal marketing communities, distinct from academia.

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[105] Wang, *supra* note 95.

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