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IHL 2.0: Is There a Role for Social Media in Monitoring and Enforcement?

Anne Herzberg and Gerald M Steinberg[*]

This article will examine the opportunities and limitations of using social media in the execution of legal duties relating to the monitoring and enforcement of IHL. The article will first provide an overview of social media. Next, it will briefly summarise the normative framework of IHL as well as the legal duties of the primary actors and promoters of IHL (for example, states, the UN, NGOs, the International Committee of the Red Cross and courts) to monitor and enforce these rules. The article will then address specific legal obligations relating to IHL monitoring and enforcement and the impact of social media on meeting these requirements.

Throughout, the article will use case studies from several conflict zones, including Sudan, Uganda, Mexico, Somalia, Gaza and Libya. The article will conclude that social media can play a critical role in promoting IHL education, and monitoring for potential violations. The benefits of this technology, however, are less clear for carrying out legal obligations related to the enforcement of IHL, such as fact-finding, arrest and prosecution. It is essential, therefore, that clear guidelines for utilising this quickly evolving technology, particularly in official fact-finding and judicial frameworks, be established.

Keywords: social media, IHL, ICC, enforcement, armed conflict

> Helicopter hovering above Abbottabad at 1AM (is a rare event).
>> Uh oh, now I'm the guy who liveblogged the Osama raid without knowing it.
>>> @ReallyVirtual, Twitter, 1–2 May 2011[1]

1. Introduction

During the early morning of 1 May 2011, United States Navy SEALs Special Forces conducted a covert operation in Abbottabad (Pakistan) to 'kill or capture' Osama Bin Laden, who was living in a walled compound within the city.[2] The news of the operation and Bin Laden's death were announced by President Barack Obama at a press conference held shortly before midnight on 1 May.[3] Although knowledge of the attack was intended to be highly classified, thanks to the

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[1] Jolie O'Dell, 'One Twitter User Reports Live from Osama Bin Laden Raid' (*Mashable Social Media*, 2 May 2011), http://mashable.com/2011/05/02/live-tweet-bin-laden-raid.

[2] 'Osama Bin Laden, al-Qaeda Leader, Dead – Barack Obama' (*BBC News*, 2 May 2011), http://www.bbc.co.uk/news/world-us-canada-13256676.

[3] Address by Barak Obama (1 May 2011), http://www.gpo.gov/fdsys/pkg/DCPD-201100314/content-detail.html.

social media platform Twitter, a computer technician in Abbottabad, blogging under the user name ReallyVirtual, unwittingly broadcast in real time news of the secret military action to hundreds of his followers.[4] Another Twitter user, 'M0hcin', also unknowingly provided updates, reporting that family members 'heard three blasts one after the other, don't really know what happened … all roads blocked, army and local admin tight lipped'. He added, 'Uncle in Atd: Heli was hovering over a militant hideout, heard 3 minor blasts + fire exchange before the heli went down'.[5] Finally, he remarked, 'Seems something nasty happening in #Abbottabad, God save us'.[6]

Similarly, social media provided astonishing access to information on the armed conflict in Libya. In February 2011, anti-Gaddafi demonstrators began to upload images of the rebellion and government reprisals on their Facebook pages.[7] NATO's YouTube channels in English, Arabic and French presented regular military footage and updates of its Operation Unified Protector. Within minutes of Muammar Gaddafi's capture and subsequent killing on 20 October 2011, images of the event recorded on cell phones were transmitted around the world via social media platforms. These graphic yet unverified scenes were widely disseminated even before Gaddafi's death was confirmed, and immediately sparked an international debate regarding the circumstances and legality of his killing.[8]

As these two examples show, social media can potentially serve as a powerful tool, focusing worldwide attention on armed conflict; it can facilitate greater scrutiny of the battlefield. These examples also suggest that social media might play a valuable role in carrying out duties related to the monitoring and enforcement of international humanitarian law (IHL).

This article examines the opportunities and limitations of using social media in the execution of legal duties relating to the monitoring and enforcement of IHL. It first provides an overview of social media. Next, it briefly summarises the normative framework of IHL as well as the legal duties of the primary actors and promoters of IHL (for example, states, the UN, NGOs, the International Committee for the Red Cross and courts) to monitor and enforce these rules. The article then addresses specific legal obligations relating to IHL monitoring and enforcement and the impact of social media on meeting these requirements.

Throughout, the article uses case studies from several conflict zones, which include Sudan, Uganda, Mexico, Somalia, Gaza and Libya. The article concludes that social media can play a critical role in promoting IHL education and monitoring for potential violations. The benefits of this technology, however, are less clear for carrying out legal obligations relating to the enforcement of IHL, such as fact-finding, arrest and prosecution. It is essential, therefore, that clear

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[4] ibid; Shefali Anand, 'Abbottabad Tweeter Unmoved by Fame' (*IndiaRealTime*, 3 May 2011), http://blogs.wsj.com/indiarealtime/2011/05/03/abbottabad-twitter-hero-unmoved-by-fame.

[5] @M0chin (*Twitter*, 1 May 2011).

[6] ibid.

[7] Lindsey Hilsum, 'Libya's YouTube and Facebook Rebels' (*Channel 4 News*, 27 February 2011), http://blogs.channel4.com/world-news-blog/libyas-youtube-and-facebook-rebels/15226.

[8] See Josh Halliday, 'Gaddafi Death Video: BBC Defends Use of "Shocking" Images' (*The Guardian*, 21 October 2011), http://www.guardian.co.uk/media/2011/oct/21/gaddafi-death-video-bbc; 'Gaddafi's Death Sparks Celebrations, Calls for Probe, as Libyans Begin New Era Free of Regime' (*DemocracyNow*, 21 October 2011), http://www.democracynow.org/2011/10/21/gaddafis_death_sparks_celebrations_probe_calls.

guidelines for utilising this quickly evolving technology, particularly in official fact-finding and judicial frameworks, be established.

2. Social Media vs Traditional Media

Social media refers to 'a group of internet-based applications that build on the ideological and technical foundations of Web 2.0 allowing for the creation and exchange of user generated content'.[9] It is one of the most rapidly growing forms of communication, with hundreds of millions of users taking part globally on a daily basis.[10] The main concept of social media is rooted in the original ideological underpinnings of the internet to facilitate the exchange of information and to build a community.[11] Social media is more informal and conversational than traditional forms of media, and users are expected to participate by creating, sharing and commenting on content.[12]

There are dozens of social media platforms. Kaplan and Haanlein[13] organise these applications into six distinct categories:

1. Collaborative projects involving many end users that jointly and simultaneously create content (for example, Wikipedia, Ushahidi, crowdsourcing).
2. Blogs/microblogs, which can be either text- or image-based (for example, Twitter, Tumblr, Storify).
3. Content communities where different forms of media can be shared (for example, YouTube, Flickr, Audioboo, Scribd).
4. Social networking sites (for example, Facebook, MySpace, LinkedIn).
5. Virtual game worlds.
6. Virtual social worlds.

Other media experts include three additional categories – mobile devices (for example, iPad, smartphones, Blackberry);[14] monitoring and metric sites (for example, Addictomatic,

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[9] Andreas M Kaplan and Michael Haanlein, 'Users of the World, Unite! The Challenges and Opportunities of Social Media' (2010) 53 Business Horizons 59, 61. Web 2.0 is 'the second stage of development of the Internet, characterized especially by the change from static web pages to dynamic or user-generated content and the growth of social networking': Oxford Dictionaries Online, http://oxforddictionaries.com/definition/english/Web+2.0.

[10] See, eg, Facebook, 'Statistics', http://newsroom.fb.com/content/default.aspx?NewsAreaId=22 (526 million daily users in March 2012); YouTube, 'Statistics', http://www.youtube.com/t/press_statistics (4 billion videos viewed per day, 800 million unique visitors each month); Graeme McMillan, 'Twitter Reveals Active User Number, How Many Actually Say Something' (*Time Magazine*, 9 September 2011), http://techland.time.com/2011/09/09/twitter-reveals-active-user-number-how-many-actually-say-something (Twitter has 100 million active users; 50 million log in each day).

[11] Kaplan and Haanlein (n 9) 61.

[12] Hilary JM Topper, 'Do You Know the Difference between New and Old Media?' (*New York Enterprise Report*, 16 March 2011), http://www.nyreport.com/articles/79511/do_you_know_the_difference_between_new_and_old_media; United States Department of Agriculture, 'Social Media', Communication Channels Newsletter (2011) 1, http://www.fns.usda.gov/snap/outreach/pdfs/toolkit/2011/Community/Communications/social-media.pdf.

[13] Kaplan and Haanlein (n 9) 62–64.

[14] Although these tools refer to hardware, they are intrinsically linked with social media and serve as the major tools for creating and sharing (particularly in developing nations where computer access is limited) social

SocialSeek); and news categorising, sharing and syndication platforms (for example, RSS, Digg, Redit).[15]

As noted, social media differs markedly from more traditional forms of media owing to several unique characteristics. The most significant advantage provided by social media is its overwhelming scope and generally open access.[16] Facebook, one of the most popular sites, has more than 900 million users (80 per cent of whom are located outside the US and Canada) with more than 50 per cent of those users logging in on any given day.[17] According to the company, more than 250 million photos are uploaded each day, and content is available in more than 70 languages.[18] Because of its scale, social media provides the ability to quickly and efficiently publicise events and information, as well as to promote cooperation, among previously unconnected groups.

Second, in addition to its magnitude, social media has the capability to exponentially reproduce information – a posting by just one person can quickly 'go viral' and reach millions of users in a short time period through powerful features such as 'retweeting', 'liking' and cross-posting among platforms. The impact of these tools can be further enhanced by social network aggregation platforms such as the Drudge Report (human generated), Google News (algorithmic selection) and Topix (automatic generation).[19] Most of these tools can also be accessed via smartphones and other mobile devices, further increasing accessibility.

Third, social media allows for the transmission and receipt of information in real time and is often used for breaking news or sharing information of immediate importance. With extensive internet access and a range of devices (laptops, phones, tablets, readers) with which to disseminate and acquire material, various communities (policy makers, government and institutional officials, journalists, activists, judges and the general public) can be immediately updated as events, such as natural disasters, humanitarian crises and armed conflict, unfold.[20] Importantly, this content can be transmitted without the intermediary filter of state officials or the media.

Fourth, social media is easy to use and requires little effort on the part of followers or activists to engage with others and share information. Doing so may be as simple as pressing a 'Like' or

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media information. Without these devices, social media would lack its unique characteristics, such as immediacy and the ability to provide 'on-the-ground' reporting.

[15] New Media Committee of the Conference of Court Public Information Officers, 'New Media and the Courts' (*New Media Report*, 26 August 2010) 7–8, http://www.ccpio.org/documents/newmediaproject/New-Media-and-the-Courts-Report.pdf.

[16] See text at Section 5.3.1.

[17] Facebook, 'Statistics' (n 10).

[18] ibid.

[19] Howard Owens, 'Four Types of Content Aggregators' (*HowardOwens.com*, 28 February 2009), http://howardowens.com/2009/02/28/four-types-online-aggregation.

[20] 'How NPR's Andy Carvin is Using Twitter to Tell Egypt's Story' (*Knight Digital Media Center*, 4 February 2011), http://www.knightdigitalmediacenter.org/news_blog/comments/20110204_how_nprs_andy_carvin_is_using_twitter_to_tell_egypts_story (noting that 'skilled use of social media as a curation tool can help journalists keep up with events – and keep interested audiences in the loop round the clock').

'Retweet' button on the social media application.[21] Depending on the strength of a user's net-
work, one minimal act can disseminate information to thousands, or even hundreds of thousands
of people, within seconds. As explained by New York University Professor and leading new
media expert, Clay Shirky, 'digital networks have acted as a massive positive supply shock to
the cost and spread of information, to the ease and range of public speech by citizens, and to
the speed and scale of group coordination'.[22] Social media makes it possible 'to synchronize
the behavior of groups quickly, cheaply, and publicly, in ways that were unavailable as recently
as a decade ago'.[23] As a result, 'social media have become coordinating tools for nearly all of the
world's political movements'.[24]

Fifth, social media often focuses on stories that do not garner much attention in the mainstream
press. A 2010 study on news consumption conducted by the Pew Research Center over 49 weeks
showed that social media and traditional media shared the same lead story for just 4 to 13 weeks
(depending on the platform).[25] Moreover, the study found that on Twitter, traditional media accounted
for only half of the sources relied upon; 40 per cent were web-based only. Social media also has a
more global focus, allowing more diverse views to be heard. In the Pew study, 26 per cent of
the top news items viewed on YouTube were based on events outside the United States.[26]

3. The Legal Framework of IHL

Before addressing the role played by social media in carrying out specific legal obligations relating
to the monitoring and enforcement of IHL, the article will briefly describe the normative framework.

3.1 Overview of the Principles of IHL

IHL represents a body of law that regulates the conduct of belligerents during armed conflict.[27] It
also codifies the treatment of those *hors de combat*, such as civilians, prisoners of war and neutral
parties. It applies to armed conflicts that are both international and local in character (though the

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[21] cf Malcolm Gladwell, 'Small Change: Why the Revolution Will not be Tweeted', *The New Yorker* (4 October
2010) 42. But Shirky notes that Gladwell 'concentrates on examples of what has been termed "slacktivism",
whereby casual participants seek social change through low-cost activities, such as joining Facebook's "Save
Darfur" group … The critique is correct but not central to the question of social media's power; the fact that barely
committed actors cannot click their way to a better world does not mean that committed actors cannot use social
media effectively': Clay Shirky, 'The Political Power of Social Media', *Foreign Affairs* (January/February 2011).
See also Jesse Lichtenstein, 'Did Twitter Make Them Do It?' (*Slate*, 2 February 2011), http://www.slate.com/
articles/news_and_politics/foreigners/2011/02/did_twitter_make_them_do_it.html.
[22] Malcolm Gladwell and Clay Shirky, 'From Innovation to Revolution: Do Social Media Make Protests
Possible?', *Foreign Affairs* (March/April 2011).
[23] ibid.
[24] Shirky (n 21).
[25] Pew Research Center's Project for Excellence in Journalism, 'New Media, Old Media: How Blogs and Social
Media Agendas Relate and Differ from the Traditional Press' (23 May 2010), http://www.journalism.org/node/20621.
[26] ibid.
[27] Françoise Hampson, 'International Humanitarian Law in Situations of Acute Crisis' (Conference on the
Promotion and Protection of Human Rights in Acute Crisis, London (UK), 11–13 February 1998), http://www.
essex.ac.uk/rightsinacutecrisis/report/hampson.htm.

applicable rules may differ). The law is set out in several treaties, which include the 1907 Hague Conventions, the four 1949 Geneva Conventions, and the Additional Protocols to the Geneva Conventions.[28] Many of the rules are also derived from customary international law.[29]

The laws are based on four main principles: distinction, proportionality, military necessity and humanity. Distinction relates to which objects or people may be targeted during armed conflict, as well as the types of weaponry that may be used. Under the rule of distinction, operations must be directed at military objectives, rather than civilian targets. Proportionality requires that any attack must be carried out so that it does not cause excessive harm to civilians or civilian objects in relation to the military advantage anticipated. Military necessity takes into account that the achievement of military goals during armed conflict is a legitimate and legal objective.[30] Finally, the laws strive to maintain the underlying principle of humanity, which seeks to minimise suffering and destruction during armed conflict.[31]

Another significant component of IHL is that it not only seeks to regulate how armed conflict is conducted, but it also prescribes how the law is to be promoted and enforced, as well as how violations of the law are to be remedied. Many of these obligations derive from Article 1 of the four Geneva Conventions that '[t]he High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances'. This rule has led to the creation of military manuals, the education of troops, the development of rules of engagement and the establishment of legal advisers within military ranks.[32] This provision, however, is also the genesis for duties that extend beyond dissemination of the law amongst armed forces, including educating the public at large, monitoring for compliance, fact-finding and investigation, collective measures against violators such as diplomatic and economic sanctions, arrest, prosecution and reparations.[33] Social media can play a potential role with regard to some of these specific obligations, as will be described in more depth in subsequent sections.

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[28] Hague Convention (IV) respecting the Laws and Customs of War on Land (entered into force 26 January 1910) Martens Nouveau Recueil (ser 3) 461 (Hague Convention); Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (entered into force 21 October 1950) 75 UNTS 31 (GC I); Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea (entered into force 21 October 1950) 75 UNTS 85 (GC II); Convention Relative to the Treatment of Prisoners of War (entered into force 21 October 1950) 75 UNTS 135 (GC III); Convention Relative to the Protection of Civilian Persons in Time of War (entered into force 21 October 1950) 75 UNTS 287 (GC IV); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (entered into force 7 December 1978) 1125 UNTS 3 (Additional Protocol I); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (entered into force 7 December 1978) 1125 UNTS 609 (Additional Protocol II).
[29] In 1995, the International Committee of the Red Cross (ICRC) undertook a study to compile the customary laws of IHL: see Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law, vol I: Rules* (International Committee of the Red Cross, Cambridge University Press 2005) (ICRC Study).
[30] Michael Schmitt, 'Military Necessity and Humanity in International Humanitarian Law: Preserving the Delicate Balance' (2010) 50 Virginia Journal of International Law 795, 799; Craig Forrest, 'The Doctrine of Military Necessity and the Protection of Cultural Property during Armed Conflicts' (2007) 37 California Western International Law Journal 177, 181.
[31] Schmitt, ibid 796.
[32] ICRC Study (n 29) rule 141 commentary.
[33] ibid; see also ICRC Study, ibid, rule 144 commentary.

3.2 Who is Obligated to Monitor and Enforce IHL?

3.2.1 States

The primary duty to uphold IHL falls on states.[34] The extent to which a state is bound by a particular rule depends on whether that state is a signatory to a treaty governing it or whether the rule in question rises to the level of customary law. The degree to which a particular norm or obligation is triggered (for example, payment of reparations for a violation) depends also upon whether the state is a party to the armed conflict at issue. There is growing consensus, however, that many IHL obligations are considered to fall on all states regardless of whether they are parties to an armed conflict.[35]

3.2.2 Non-State Actors

Although non-state actors were traditionally viewed as not being bound by the rules of IHL (as they were neither states nor signatories to IHL treaties), this position has changed over time. The prevailing opinion now considers certain armed non-state actors, such as organised guerilla groups and terrorist organisations, to be bound by IHL and, in particular, by the rule of distinction.[36] This obligation derives from Common Article 3 of the Geneva Conventions as well as Protocol II to the Conventions.[37] Some armed groups have also taken it upon themselves to accede to international declarations to abide by particular laws, although it is unclear the extent to which such groups uphold these types of document.[38]

3.2.3 International Organisations

International organisations may also be bound by certain provisions of IHL. Regardless of legal duty, however, they can play prominent roles in monitoring and enforcing IHL and, indeed, many have chosen to do so.

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[34] See, eg, Carlo Focarelli, 'Common Article 1 of the 1949 Geneva Conventions: A Soap Bubble' (2010) 21 European Journal of International Law 125.

[35] ibid; ICRC Study (n 29) rule 144 commentary (according to this rule, all states are required to act individually and jointly to prevent violations and ensure respect for the law).

[36] See, eg, Liesbeth Zegveld, *The Accountability of Armed Opposition Groups in International Law* (Cambridge University Press 2002). See also ICRC Study, ibid, rule 139 commentary.

[37] See ibid; *Military and Paramilitary Activities in and against Nicaragua* (*Nicaragua v US*), Merits, Judgment, 27 June 1986 [1986] ICJ Rep 14, 114; GC I–IV and Additional Protocol II (n 28), Convention for the Protection of Cultural Property in the Event of Armed Conflict (entered into force 7 August 1956) 249 UNTS 240 (Cultural Property Convention); Second Protocol (entered into force 9 March 2004) 38 ILM 769 (Cultural Property Convention Protocol II).

[38] Geneva Academy of International Humanitarian Law and Human Rights, 'Armed Non-State Actors and International Norms', February 2011, 2, http://www.geneva-academy.ch/docs/projets/NonStateActors/Armed%20Non-State%20Actors%20and%20International%20Norms_Workshop_Summary_ENG.pdf   (noting that a group of 41 armed groups signed a declaration to ban the use of land mines).

The obligation on organisations – such the United Nations (UN), the European Union (EU), the Organization for Security and Co-operation in Europe (OSCE), NATO and international tribunals – to uphold IHL or to fulfil specific roles relating to the monitoring and enforcement of IHL, is derived from duties delegated to them by their member states as well as by the dictates in their governing charters and documents.[39] In 1999, for example, the UN Secretary General issued a bulletin declaring that all UN forces are bound by IHL when conducting operations.[40] Article 89 of Additional Protocol I calls on states to act in cooperation with the UN in the event of violations.[41] The OSCE adopted a statement in 2007 mandating that all counter-terror activities must be in compliance with IHL.[42] The EU has reiterated that one of the goals of its founding is to promote compliance with IHL.[43] It notes that measures at its disposal to do so include political dialogue, sanctions, crisis management operations and collecting evidence for International Criminal Court (ICC) operations.[44]

Since its inception in the mid-1800s, the International Committee of the Red Cross (ICRC) has played a prominent role in promoting rules of conduct during war and the protection of civilians.[45] The organisation has also played a central role in passing treaty law.[46] As a result, many IHL treaties specifically delegate duties to the ICRC: for instance, the Geneva Conventions and Additional Protocol I grant the ICRC the right to visit prisoners of war and civilian internees.[47] The Conventions also grant the organisation a right of humanitarian initiative to intervene in armed conflicts.[48] Moreover, the Statutes of the ICRC mandate that the organisation works for the 'faithful application' of IHL and to 'take cognizance of any complaints' relating to alleged breaches of the law.[49] They also charge the organisation with 'dissemination' of the law.[50]

3.2.4 NGOS AND PRIVATE INDIVIDUALS

Non-governmental organisations (NGOs) and private individuals do not have any formal IHL legal obligations placed upon them to the extent they are not engaging in organised military

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[39] See, eg, Peter Chapman, 'Ensuring Respect: United Nations Compliance with International Humanitarian Law' (2009) 17 Washington College of Law Human Rights Brief 1; European Union Guidelines on Promoting Compliance with International Humanitarian Law, 2005/C 327/04, 23 December 2005 (EU Guidelines), 6; ICRC Study (n 29) rule 144 commentary.

[40] Secretary General Bulletin, 'Observance by United Nations Forces of International Humanitarian Law' UN Doc ST/SGB/1999/13, 6 August 1999.

[41] Additional Protocol I (n 28) art 89.

[42] OSCE and ODIHR, 'OSCE Human Dimension Commitments on the Prevention of Terrorism' (April 2011), http://www.osce.org/odihr/42555.

[43] EU Guidelines (n 39) 3.

[44] ibid 8–10.

[45] ICRC, 'The ICRC's Mandate and Mission' (29 October 2010), http://www.icrc.org/eng/who-we-are/mandate/overview-icrc-mandate-mission.htm.

[46] ibid; Additional Protocol I (n 28) arts 97, 98.

[47] ibid; GC IV, (n 28) arts 3(2), 10, 11; Additional Protocol I, ibid art 17.

[48] ibid; GC IV, ibid arts 10, 12, 14, 63; Additional Protocol I, ibid arts 5, 33, 78, 81.

[49] Statutes of the ICRC, 8 May 2003, art 4(c), http://www.icrc.org/eng/resources/documents/misc/icrc-statutes-080503.htm.

[50] ibid arts 4(g), 5(1).

activities. However, many NGOs have taken it upon themselves to play active roles in the monitoring and enforcement of IHL. Given this self-appointment, in carrying out their activities NGOs should be guided by good governance principles of transparency, accuracy, responsible advocacy, impartiality and non-discrimination. Many NGO mandates include a commitment to these standards, and many have also signed initiatives under which they agree to be bound by these principles.[51] Other NGOs have developed charters to implement good governance practices. An initiative spearheaded by several international NGOs – including Amnesty International, Greenpeace, Oxfam, Save the Children and Transparency International – created the International NGO Accountability Charter[52] to institute standards of conduct and accountability.[53] In 2009, the International Bar Association and the Raoul Wallenberg Institute of Human Rights and Humanitarian Law developed the Lund-London Guidelines for International Human Rights Fact-Finding to assist NGOs engaged in IHL monitoring and enforcement activities, as well as to standardise this conduct.[54]

4. The Obligation to Disseminate and Educate About IHL

4.1 Legal Framework

One of the primary obligations of IHL is that its guardians should widely disseminate and educate about its tenets. This rule derives from Article 1 of each of the four 1949 Geneva Conventions, which obligates states parties 'to respect and to ensure respect for the present Convention in all circumstances'.[55] To carry out this directive, the Conventions[56] require states parties

> to disseminate the text of the present Convention as widely as possible . . . and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population.

Highlighting the importance of educating all sectors of society about the rules of IHL, the Pictet commentaries on the Conventions stress that 'no stone should be left unturned in the pursuit of

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[51] See, eg, Amnesty International's statute, which includes the core aims of universality, impartiality, independence and accuracy, http://amnesty.org/en/who-we-are/accountability/statute-of-amnesty-international. The French human rights group, FIDH, notes that its key values are universality, independence and objectivity: FIDH (International Federation for Human Rights), 'Our Fundamentals', http://www.fidh.org/-FIDH-s-Role-. Whether NGOs actually abide by these principles has become the increasing focus of academic inquiry: see, eg, Gerald Steinberg, Anne Herzberg and Jordan Berman, *Best Practices for Human Rights and Humanitarian NGO Fact-Finding* (Nijhoff 2012).

[52] International Non-Governmental Organisations Accountability Charter (20 December 2005), http://www.ingoaccountabilitycharter.org/wpcms/wp-content/uploads/INGO-Accountability-Charter.pdf.

[53] INGO Accountability Charter, 'Q&A', http://www.ingoaccountabilitycharter.org/about-the-charter/questions-and-answers/#WhowrotetheCharter.

[54] International Human Rights Fact-Finding Guidelines, http://www.factfindingguidelines.org/about.html.

[55] GC I–IV (n 28) art 1.

[56] See, eg, GC I, ibid art 47; GC IV, ibid art 144.

so all-important an aim'.[57] The EU Guidelines on Promoting Compliance with International Humanitarian Law also emphasise the need to conduct 'training and education', and recommend promoting compliance via general and specific 'demarches and/or public statements'.[58] US Army and other military field manuals underscore the obligation to disseminate the rules of the Geneva Conventions.[59] UN Security Council Resolution 1674 recognises 'the important role that education can play in supporting efforts to halt and prevent abuses committed against civilians affected by armed conflict' and *'Calls upon* all parties concerned to ensure that specific measures for the protection of civilians … [includes] (iv) the facilitation of early access to education and training.[60] Similarly, a central focus of the mandate of the ICRC, is 'to prevent suffering by promoting' IHL.[61]

4.2 Using Social Media for IHL Education and Promotion

Because of its unique characteristics, described earlier in the article – including the ability to reach large audiences and diverse populations, as well the ability to target specific populations if necessary – social media is an excellent tool to widely disseminate and educate on the subject of IHL. State and non-state actors have begun to harness this potential and have adapted social media specifically for these objectives. Most governments, military bodies, international institutions and NGOs participate in a variety of social media platforms. This engagement ranges from self-promotion and publicity for reports and campaigns relating to conduct during armed conflict, to disseminating information on weapons systems, policies and military operations.

The US government has dozens of Twitter accounts, including accounts for the Department of Defense, the State Department, many embassies and Voice of America radio.[62] Each of the branches of the US armed forces also has multiple accounts.[63] The US Army has used its Twitter account, for example, to document how civilian infrastructure is protected and how casualties are cared for in Afghanistan.[64] Most UN offices and divisions are represented on a

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[57] See Jean S Pictet (ed), *Commentary on the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (International Committee of the Red Cross 1960) 349.

[58] EU Guidelines (n 39).

[59] US Department of the Army, *Field Manual 27-10, The Law of Land Warfare*, 18 July 1956 (as modified by Change No 1, 15 July 1976), 11–12.

[60] UN Doc S/RES/1674 (2006), 28 April 2006 (emphasis in the original).

[61] Yves Sandoz, 'The International Committee of the Red Cross as Guardian of International Humanitarian Law', (*ICRC.org*, 31 December 1998), http://www.icrc.org/eng/resources/documents/misc/about-the-icrc-311298.htm; Steven R Ratner, 'Law Promotion Beyond Law Talk: The Red Cross, Persuasion, and the Laws of War' (2011) 22 European Journal of International Law 459.

[62] See, eg, @USAgov, @StateDept, @USUN, @whitehouse, @TheJusticeDept, @FBIPressOffice, @TSABlogTeam, @USAID, @USEmbPrestoria, @USConsLeipzig, @AmbassadorRice, @ONDCP (US drug policy).

[63] See, eg, @theJointstaff, @us_navyseals, @USArmyAfrica, @USNavy, @USArmy, @USairforce, @USMarineCorps, @CENTCOM, @GENRayOdierno (Joint Chief), @NoradNorthcom, @USArmyEurope.

[64] @USArmy, *Twitter*, 3 May 2012: 'These @USArmy MedEvac UH-60s are just not getting tired any time. I see them 12/7 in Kabul sky flying around moving casualties, saving lives'; 26 April 2012: 'Video: @USArmyReserve Soldiers risk their lives to keep #Afghanistan roads safe ht.ly/apggy'.

variety of platforms.[65] The United Nations' Facebook page, for example, posts items on conflicts in Syria, Darfur and Congo, land mine policy, and other information related to IHL.[66] The UN's Twitter account operates similarly.[67] On 10 April 2012 Ban Ki Moon participated in a Google+ 'hangout' where he answered questions from global participants on a variety of issues, including enhancing the protection of civilians in armed conflict.[68] NATO operates YouTube channels in three languages, numerous Twitter accounts and Facebook pages that provide regular updates of its activities in Afghanistan, Libya and elsewhere.[69] The organisation also promotes regular web-chats so that the public can engage in Q&A with NATO and other government officials about NATO operations and policies.[70] The Israel Defence Forces (IDF) Spokesperson's Twitter account has nearly 30,000 followers; there are several accounts in multiple languages, and numerous Israeli military and defence officials have personal accounts.[71] The IDF Spokesperson also has a special unit devoted to transmitting information via social media platforms. Tweets include messages regarding consignments to Gaza, reports of rocket fire on civilians, and information on new weapons capabilities and force protection.[72]

Many international tribunals have a social media presence which can be used to educate the public about their work and about the laws of IHL.[73] This publicity can help to develop a higher profile for these courts, increasing respect for and bolstering their institutional standing. The ICC's Twitter account provides updates on court proceedings, notices of new filings and links to live streaming of hearings.[74] The International Criminal Tribunal for the former Yugoslavia (ICTY) uses Twitter in a similar way and also posts its updates in Serbo-Croatian.[75] On 22 February 2012, the Extraordinary Chambers in the Courts of Cambodia (the Khmer Rouge Tribunal) posted on its Twitter feed an apology from a former Khmer Rouge jailer to his victims.[76] The Special Court of Sierra Leone has used Twitter to regularly announce public lectures

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[65] See, eg, @UN, @UNPeacekeeping, @UNpublications, @UN_Women, @UNDP, @UN_HRC, @Refugees, @MONUSCO, @UNHABITAT, @UNICEF, @WHO, @unescoNOW, @UN_Radio, @WFPLogistics.

[66] http://www.facebook.com/unicnetwork.

[67] https://twitter.com/#!/un.

[68] 'Ban Ki-moon Google+ Hangout' (*YouTube*, 10 April 2012), http://www.youtube.com/watch?v=wRhq-qBsfkY&feature=relmfu.

[69] See, eg, NATO Community Channel, OTAN Channel (http://www.youtube.com/user/NATOCOMMUNITY); http://www.facebook.com/NATO; @NATO, @NATOPress, @AndersFoghR (NATO Secretary General).

[70] See, eg, @US Embassy Haiti, *Twitter*, 9 May 2012: '#Chicago2012: @SlaughterAM: #NATO works against threats such as terrorism and piracy, but also does humanitarian missions'; @US Embassy Brussels, *Twitter*, 9 May 2012: 'Interested in #NATO, but unable to attend the summit? On May 10, join our Webchat with NDU#LeoMichel goo.gl/9Ir5a #Chicago2012'.

[71] See, eg, @IDFSpokesperson, @AvitalLeibovich, @SachaDratwa, @IDFinJapan, @CaptainBarakRaz, @AvichayAdraee, @Tsahal_IDF.

[72] @IDF Spokesperson, *Twitter*, 10 May 2012: 'Yesterday 5,828 tons of goods & gas (including 60 tons of candy) entered #Gaza from #Israel'; 'Breaking: rocket fired from #Gaza lands in southern #Israel'; 7 May 2012: 'The #IDF has launched a campaign to prevent abductions of soldiers. Read why & watch video with English captions'.

[73] The Twitter account for the ICC Office of the Prosecutor, for instance, has only 200 followers and has transmitted just 10 'tweets' since April 2011 (as of 27 February 2012).

[74] See, generally, @IntCrimCourt, *Twitter*.

[75] See, generally, @ICTYnews, *Twitter*.

[76] @KRTribunal, *Twitter*, 22 February 2012: '#ECCC Compilation of statements of apology made by Kaing Guek Eav alias Duch distributed by media bit.ly/zzUXIV #krt #cambodia'.

and seminars in Freetown relating to IHL issues and to conduct outreach with local communities.[77]

NGOs have become particularly savvy users of social media, and their numbers of followers and subscribers often significantly exceed those of state actors and international institutions. Major NGOs, such as Amnesty International, Human Rights Watch, Médecins Sans Frontières and Oxfam, have a significant presence on various social media platforms with hundreds of thousands of followers.[78] Their videos have received millions of views on YouTube.[79] NGOs use these sites to publicise their reports and campaigns, highlight violations, name and shame abusers, generate activism and raise funds. This presence means that NGOs can quickly transmit information related to IHL to a vast number of people in a short amount of time.

Amnesty International frequently tweets to its more than 400,000 followers about IHL, ranging from accounts of potential violations to efforts at prosecuting suspected war criminals. On 19 April 2012, for instance, it tweeted a link to a report documenting the organisation's efforts to arrest Bosco Ntaganda, leader of an armed Congolese militia group.[80] Two days later, it highlighted a report relating to its mission to collect testimonies regarding attacks on civilians in Southern Kordofan, Sudan.[81] Following the verdict against Charles Taylor by the Special Court of Sierra Leone on 26 April 2012, the organisation provided several updates on, and analyses of, the case.[82]

The ICRC also has a social media presence, although the organisation does not appear to have invested resources in this technology to the same level as states, NGOs or other international institutions.[83] Its use of social media in non-English formats is especially limited. While the ICRC's English Twitter feed, for instance, has approximately 100,000 followers, its Arabic account has only 575.[84] Given the many armed conflicts occurring in the Arab world (Syria,

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[77] @SpecialCourt, *Twitter*, 2 May 2012: 'Freetown – Prosecutor Brenda Hollis briefed Sierra Leone civil society activists & representatives of INGOs today on the Taylor judgement'; 28 February 2012: 'Freetown – The Prosecutor & Principal Defender take questions at today's Outreach at the Annie Walsh Memorial School'.

[78] Amnesty has more than 400,000 Twitter followers; HRW and Oxfam each exceed 200,000 followers. MSF has more than 150,000 followers on Twitter and close to 450,000 people who 'like' the organisation's Facebook page (as of 14 May 2012). While these numbers may seem small compared to the figures for celebrities or media outlets, they vastly exceed those of most state actors and international organisations. Moreover, as many journalists and celebrities also follow these NGOs, the potential for NGO material to reach tens of millions of people is greatly enhanced.

[79] See, eg, Amnesty International YouTube account as of 14 May 2012, http://www.youtube.com/user/AmnestyInternational/videos (nearly 3 million views); HRW account as of 14 May 2012, http://www.youtube.com/user/humanrightswatch?feature=results_main (nearly 2 million views); MSF account as of 14 May 2012, https://www.youtube.com/user/MSF (nearly 1.2 million views).

[80] @Amnesty, *Twitter*, 19 April 2012: 'Our efforts to ensure the arrest of Bosco Ntaganda owl.li/aop21 #ICC #DRC #Kony2012'.

[81] ibid, 21 April 2012: 'From the Field: Amnesty Mission to South Sudan owl.li/aqdra'.

[82] ibid, 27 April 2012: 'Charles Taylor verdict sends message no one is above the law. Demand all war criminals are brought to justice:http://www.amnesty.org.au/news/comments/28500/'; 'Hague verdict: Charles Taylor guilty of aiding Sierra Leone war crimeshttp://www.amnestyusa.org/news/news-item/charles-taylor-guilty-of-aiding-sierra-leone-war-crimes'.

[83] As measured in terms of frequency of postings, podcasts, webchats and numbers of subscribers and followers on its various accounts.

[84] @icrc_arabic, *Twitter*, as of 27 February 2012.

Libya, Yemen), there would appear to be an acute need among the local populations for information on IHL. The prominence of social media in this region, as demonstrated by the events of the 'Arab Spring', would seem to suggest that social media would be a natural vehicle through which the ICRC could provide this critical information.

5. Reporting and Monitoring of IHL Violations

5.1 Legal Framework

In addition to the requirements to widely disseminate and educate about the rules, IHL also includes monitoring mechanisms, such as on-site visits and reporting. Article 143 of the Fourth Geneva Convention proscribes that 'representatives or delegates of the Protecting Powers shall have permission to go to all places where protected persons are, particularly to places of internment, detention and work'.[85] Article 87(1) of Additional Protocol I requires parties or individuals under their control 'to report' breaches of the Geneva Conventions and Additional Protocol I. The EU IHL guidelines note that its institutions 'should monitor situations within their areas of responsibility where IHL may be applicable'.[86] The EU, UN and other international bodies regularly send observers to areas of armed conflict in order to monitor compliance with the law.[87] While NGOs are not legally obligated to engage in monitoring, many of these groups see it as a primary function of their organisations to watch and report on the compliance of belligerents with IHL.

5.2 Opportunities for Using Social Media to Monitor and Report

Social media can serve as a useful conduit for monitoring armed conflict and tracking potential violations of IHL. It provides a quick and immediate way to transmit information to civilian populations as well as to government and international officials. Also, because of its wide availability to people on the ground, it is easier to acquire real-time reports of conduct that may otherwise be difficult to obtain through more traditional forms of media because of difficulties of journalistic access or of media filtering and censorship regulations.

In Mexico's drug war – which has killed more than 30,000 since 2006, and is classified by some legal scholars as a non-international armed conflict[88] – Twitter has become a particularly important communication method for civilians.[89] As a result of the rampant harassment,

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[85] GC IV (n 28); GC I, II (n 28) art 8.
[86] EU Guidelines (n 39) 5.
[87] See, eg, missions to Syria, Congo, Côte d'Ivoire, Georgia, Sudan, etc.
[88] See Carina Bergal, 'The Mexican Drug War: The Case for a Non-International Armed Conflict Classification' (2011) 34 Fordham International Law Journal 1042.
[89] See Guadalupe Correa-Cabrera and Jose Nava, 'Drug Wars, Social Networks and the Right to Information' (paper prepared for delivery at the 2011 Annual Meeting of the American Political Science Association, Seattle, Washington, September 2011) 1–4.

intimidation and murder of law enforcement officials, as well as journalists who report on drug lords and gang activity, traditional ways to inform and protect the public have shut down. Twitter and other social media have filled this vacuum, and are being used to notify the public of attacks and advise on checkpoints and areas of 'narco-terror' activity.[90] As reported in *The New York Times*, 'social networks have been used to route around identifiable sources of repression and to unify groups dispersed over large areas. In Mexico, Twitter, Facebook, and other tools are instead deployed for local survival'.[91]

Transmission of social media reports on IHL violations may generate a public outcry for intervention. The ability to receive information quickly can also improve the humanitarian response and lead to faster action to enhance protection of those *hors de combat*. These reports may also lead to the more rapid imposition of economic and diplomatic sanctions, military intervention and the apprehension of perpetrators. In addition to facilitating the legal obligations for monitoring situations where IHL is applicable, enhanced public scrutiny via social media can serve as a check to ensure that those involved in humanitarian or military intervention are not also engaging in violations of the law.

Social media brought considerable attention to the 2011 civil war in Libya, leading to a rapid response by the international community. Within two weeks of the conflict coming to light on social media sources, the UN Security Council passed Resolution 1970, condemning 'serious violations' of IHL, referring the case to the ICC, and imposing an arms embargo and financial sanctions on the Gaddafi regime.[92] On 3 March 2011, the ICC Prosecutor opened an investigation regarding potential war crimes and crimes against humanity, and NATO imposed a blockade and a no-fly zone on 23 March.[93] As mentioned, NATO also used social media to keep the public apprised of its Libyan operations and, on 21 October 2011, NATO Commander Admiral James Stavridis used his Facebook page and Twitter account to announce the end of the organisation's mission in the country.[94]

In addition to the operational updates, NATO used social media sites to monitor armed conflicts and track movements of armed forces. In the Libyan conflict, NATO relied on social media to gather information and recruited members of the public to serve as 'volunteer intelligence analysts'.[95] These volunteers reviewed satellite images, tracked maritime traffic and monitored chatter on social media platforms. The information was processed at a central location and 'filtered for

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[90] ibid.
[91] Damien Cave, 'Mexico Turns to Social Media for Information and Survival', *The New York Times* (24 September 2011).
[92] UNSC Res 1970 (2011), UN Doc S/RES/1970 (2011), 26 February 2011.
[93] ICC Office of the Prosecutor, Press Release, 'ICC Prosecutor to Open Investigation in Libya' (2 March 2011); Tamir Eshel, 'NATO Takes Control – Coordinating Air and Naval Blockade on Libya' (*Defense Update*, 27 March 2011), http://defense-update.com/20110327_libya_report.html.
[94] Spencer Ackerman, 'On Facebook, NATO Chief Announces End to Libya War' (*Danger Room*, 21 October 2011), http://www.wired.com/dangerroom/2011/10/nato-libya-war-facebook ('I will be recommending conclusion of this mission to the North Atlantic Council of NATO in a few hours').
[95] Graeme Smith, 'How Social Media Users are Helping NATO Fight Gadhafi in Libya', *Globe & Mail* (14 June 2011).

relevance and authenticity'.[96] Once corroborated, NATO used the data to assist in targeting and other military attacks. In one case, a volunteer, finding that a gas station had been taken over by Gaddafi forces, used Twitter to provide the latitude and longitude of the location.[97] In another case, a user alerted NATO to fuel tankers eluding its troops, and they were subsequently interdicted.[98]

Terrorist organisations, Hamas and the Somali-based al-Shabaab, have also recognised the power of social media to communicate.[99] While this causes significant concerns regarding the ability of these groups to transmit propaganda or coded messages, participation by the groups in this technology also allows law enforcement agencies to track illegal activity and gather intelligence that can be used to prevent future IHL violations.[100] The United States has openly acknowledged that it is using social media data collection to monitor activity linked to terrorism. On 19 January 2012, the Federal Bureau of Investigation announced a plan 'to monitor and analyze global activity on Facebook, Twitter, and other social networks'.[101] The announcement noted that social media is a 'valued source of information' because it is 'both eyewitness and first response to the crisis … Intelligence analysts will often use social media to receive the first tip-off that a crisis has occurred, collect details of the crisis on scene through eyewitnesses … and can even serve as evidence for investigation'.[102]

5.2.1 CRISIS MAPPING

One social media tool increasingly being used to monitor situations where IHL is applicable is crisis mapping. Crisis mapping combines crowdsourced event data with maps and aerial and satellite imagery to graphically depict armed conflict, humanitarian crises or natural disasters.[103] The resulting maps serve as an early warning mechanism for potential IHL violations, as well as to coordinate humanitarian response. To date, this technology has been adopted primarily by NGOs and the UN. Amnesty International was one of the early users of this technology and envisioned that it would not only have a monitoring function, but hoped it would play a key role in bringing perpetrators of IHL violations to justice. In 2007, the NGO launched the Eyes on Darfur project, which used high-resolution satellite imaging to monitor 'war-torn' villages in Darfur.[104] Through

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[96] Richard Norton-Taylor and Nick Hopkins, 'Libya Air Strikes: NATO Uses Twitter to Help Gather Targets', *The Guardian* (15 June 2011).

[97] See Smith (n 95).

[98] ibid.

[99] See, eg, Will Oremus, 'Twitter of Terror' (*Slate*, 23 December 2011), http://www.slate.com/articles/technology/technocracy/2011/12/al_shabaab_twitter_a_somali_militant_group_unveils_a_new_social_media_strategy_for_terrorists_.html.

[100] Edward Marsico, Jr, 'Social Networking Websites: Are MySpace and Facebook the Fingerprints of the Twenty-First Century?' (2010) 19 Widner Law Journal 967.

[101] Jared Keller, 'The FBI Wants to Read Your Tweets' (*The Atlantic*, 26 January 2012), http://www.theatlantic.com/technology/archive/2012/01/the-fbi-wants-to-read-your-tweets/252059.

[102] ibid.

[103] International Network of Crisis Mappers, http://crisismappers.net.

[104] Amnesty International, 'Amnesty International Adopts Powerful Technology in Campaign to Protect Civilians in Darfur – Satellite Cameras to Monitor Events on the Ground' (6 June 2007), http://amnesty.org/en/library/asset/AFR54/025/2007/en/317435b3-d38a-11dd-a329-2f46302a8cc6/afr540252007en.pdf.

the project, Amnesty hoped 'to provide unimpeachable evidence of the atrocities being committed in Darfur – enabling action by private citizens, policy makers and international courts'.[105] This project has been expanded for use in conflicts in Nigeria and Pakistan, where mapping is coupled with links to witness statements, photos, video footage and other documentation.[106]

Similar programmes have been developed by NGOs in conjunction with the United Nations Institute for Training and Research's Operational Satellite Applications Programme (UNOSAT). UNOSAT has used this technology to uncover IHL violations, as well as to track refugees and internally displaced persons.[107] The teaching of this technology has been incorporated into IHL curricula.[108] In December 2010, UNOSAT, Harvard University and the NGO, Enough, launched the Sentinel Satellite Project.[109] In addition to providing a graphical database of alleged violations committed by Sudanese forces in South Sudan, the project also utilised social media to publicise and disseminate its findings.[110] As part of its work, the project claims to have discovered evidence of eight mass graves in Sudan's border state of South Kordofan.[111] It has also been reported that 'a significant portion' of an ICC war crimes investigation against Sudanese Defence Minister, Abdelrahim Mohamed Hussein, was 'based on data from the Satellite Sentinel Project'.[112]

Another mapping platform used by NGOs and other activists is the crowdsource site, Ushahidi.[113] This website allows users to email or SMS reports of violations, which are then posted on maps used to monitor a conflict. It is hoped that the information gathered will generate activist support and provide evidence to fact-finding bodies and courts. The site was originally developed in response to the 2007 election violence in Kenya. The creators believed that 'the number of deaths being reported by the government, police, and media is grossly underreported' and they 'don't think we have a true picture of what is really going on'.[114] According to a report in *The Guardian*, Ushahidi was responsible for public attention to the violence, which ultimately

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[105] Amnesty International, Eyes on Darfur, 'About the Project', http://www.eyesondarfur.org/about.html.

[106] Amnesty International, Eyes on Nigeria, http://www.eyesonnigeria.org/index.aspx; Amnesty International, Eyes on Pakistan, http://www.eyesonpakistan.org/satellite.html. See also American Association for the Advancement of Science, 'Pioneering AAAS Project Finds Strong Evidence of Zimbabwe Repression' (30 May 2006), http://www.aaas.org/news/releases/2006/0530zim.shtml.

[107] UNITAR, 'UNOSAT Trains Duke University Students in Geospatial Information for Humanitarian Relief and Human Security' (25 July 2011), http://www.unitar.org/unosat-trains-duke-university-students-geospatial-information-humanitarian-relief-and-human-security.

[108] Institutions include Duke University, Harvard University and the International Institute of International Humanitarian Law.

[109] UNITAR, 'UNOSAT: The Pilot Phase of Satellite Sentinel Project over South Sudan has Concluded Positively' (26 July 2011), http://www.unitar.org/unosat-pilot-phase-satellite-sentinel-project-over-south-sudan-has-concluded-positively.

[110] Diane Marie Amann, 'All Eyes On' (*IntLawGrrls*, 6 December 2011), http://www.intlawgrrls.com/2011/12/all-eyes-on.html.

[111] Satellite Sentinel Project, http://hhi.harvard.edu/programs-and-research/crisis-mapping-and-early-warning/satellite-sentinel-project; see also 'Our Story', http://www.satsentinel.org/our-story.

[112] Mark Benjamin, 'George Clooney's Satellites Build a Case against an Alleged War Criminal' (*Time Magazine*, 3 December 2011), http://www.time.com/time/world/article/0,8599,2101425,00.html.

[113] 'Ushahidi' means 'testimony' in Swahili.

[114] 'Ushahidi.com' (*Kenyan Pundit*, 9 January 2008), http://www.kenyanpundit.com/2008/01/09/ushahidicom.

resulted in indictments before the ICC.[115] Ushahidi maps have also been created for the violence in Syria,[116] the 2011 election crisis in Côte d'Ivoire,[117] and the anti-government protests in Yemen.[118]

The NGOs, Invisible Children and Resolve, have developed a more graphically sophisticated version of crisis mapping with their website, LRA Crisis Tracker.[119] This application tracks incidents of violence committed by the Lord's Resistance Army (LRA) in Uganda with the aim of providing information to policy makers and humanitarian agencies, as well as sending out alerts of attacks to the public. The site bases its data on incident reports collected from local NGOs, UN agencies and the Invisible Children's Early Warning Radio Network.[120]

5.2.2 MOBILE TECHNOLOGY

Because internet penetration is often limited in countries facing the worst conflicts, states, NGOs and international institutions have utilised mobile technology, in particular text messaging, as an alternative to web-based social media platforms. According to a study on Global Digital Communication conducted by the Pew Research Center, text messaging was used by 75 per cent of cell phone owners.[121] The researchers found that rates of texting were highest in Kenya and Indonesia.[122] The survey also discovered that a high percentage of users in developing countries (for example, Mexico and Egypt) used cell phones to record video and take pictures.[123]

Capitalising on this prevalence and familiarity with mobile technology, Columbia University launched the Voix des Kivus ('Voice of the Kivus') project whereby Congolese can send SMS messages regarding IHL and human rights violations in the Democratic Republic of Congo (DRC) to the project organisers, who then compile and disseminate the data back to the local population.[124] Similarly, the UN Mission for Côte d'Ivoire established an SMS hotline for reporting violations and other abuses.[125] This material was eventually incorporated into reports that were used by the ICC Prosecutor to issue indictments.[126]

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[115] Simon Jeffery, 'Ushahidi: Crowdmapping Collective that Exposed Kenyan Election Killings' (*The Guardian*, 7 April 2011), http://www.guardian.co.uk/news/blog/2011/apr/07/ushahidi-crowdmap-kenya-violence-hague.
[116] Syria Tracker, https://syriatracker.crowdmap.com/main.
[117] Côte d'Ivoire Crisis 2011, https://rci2011.crowdmap.com/main.
[118] Protests in Yemen, https://yemenprotests.crowdmap.com/main.
[119] http://www.lracrisistracker.com.
[120] ibid.
[121] Pew Research Center, 'Global Digital Communication: Texting, Social Networking Popular Worldwide', 20 December 2011(Pew Texting Survey), http://www.pewglobal.org/2011/12/20/global-digital-communication-texting-social-networking-popular-worldwide/?src=prc-quiz.
[122] ibid.
[123] ibid.
[124] Columbia Center for the Study of Development Strategies, 'Event Mapping in Congo', http://cu-csds.org/projects/event-mapping-in-congo.
[125] ICC, *Situation in the Republic of Côte d'Ivoire,* Request for Authorisation to Open an Investigation Pursuant to Article 15, ICC 02-11, Pre-Trial Chamber III, 23 June 2011, Annex 3 (attaching Report of the High Commissioner of Human Rights on the situation of Human Rights in Côte D'Ivoire, 15 February 2011, para 41).
[126] ibid.

5.3 CHALLENGES AND LIMITATIONS OF USING SOCIAL MEDIA FOR MONITORING IHL
COMPLIANCE

As demonstrated, there are many ways in which social media can serve as a beneficial tool to monitor areas for potential IHL violations. Several challenges and limitations, however, arise when this technology is employed during intense outbreaks of violence. These problems are even more acute in situations of armed conflict, because events are fast-moving, the fog of war may obscure what is happening on the ground, and the potential for mass civilian casualties is much higher.

5.3.1 INTERNET ACCESS IN CONFLICT ZONES

One of the primary limitations of using social media to carry out IHL compliance monitoring is that many of the countries facing serious armed conflicts – where the risks of potential IHL violations and civilian casualties are the highest – have the lowest internet penetration rates in the world. For instance, as of March 2009, the reported rate for the DRC was 0.3 per cent with approximately 230,000 users; Sri Lanka's rate was slightly higher at 3.7 per cent and 770,000 users; no internet data was available for North Korea.[127] Africa as a whole had a penetration rate of 10.9 per cent.[128] The rate for the Asian continent was 21.5 per cent.[129] As confirmed by the Pew Digital Global Communication survey, social networking is more common in those countries where internet access rates are higher.[130]

While the problem of limited connectivity can be overcome if international activists take an interest in a given conflict, civilians in areas of restricted internet access must rely on NGOs and other international actors to adopt their cause and carry on social media campaigns on their behalf. Whether such campaigning occurs, however, is often driven by media interest and political concerns, as opposed to where abuse is most severe. A study by Ron, Ramos and Rodgers, on media influence on the agenda of NGO human rights reporting, recounted the remarks of one senior Amnesty manager: 'You can work all you like on Mauritania but the press couldn't give a rat's ass.'[131]

Radio Free Europe correspondent, Golnaz Esfandiari, has also questioned the utility of social media to accurately and constructively monitor potential violations of IHL in remote or non-Western conflict zones.[132] Using the case study of the 2009 post-election violence in Iran, she raises the issue of the tendency of Western journalists and policy makers to focus on social

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[127] Internet World Stats, http://www.internetworldstats.com/list4.htm#low.
[128] Antonio Lupetti, 'The Internet is Still Not For Everyone' (*Work Up Blog,* 5 October 2010), http://woorkup.com/2010/10/05/the-internet-is-still-not-for-everyone.
[129] ibid.
[130] Pew Texting Survey (n 121).
[131] James Ron, Howard Ramos and Kathleen Rodgers, 'What Shapes the West's Human Rights Focus?' in Jeff Goodwin and James M Jasper (eds), *The Social Movements Reader: Cases and Concepts* (2nd edn Wiley Blackwell 2009) 351.
[132] See Golnaz Esfandiari, 'The Twitter Devolution', *Foreign Policy* (7 June 2010).

media generated in English as opposed to local languages, acidly commenting: 'Through it all, no one seemed to wonder why people trying to coordinate protests in Iran would be writing in any language other than Farsi.'[133] Without the ability to process social media that might be generated in local languages, reports of abuses or other information vital for monitoring compliance with IHL may well be overlooked.

5.3.2 Reliability

The reliability of social media information is another central concern if it is to be used for monitoring for potential IHL violations. As noted by one commentator, '[t]he problem with these networking sites is that it is really a domain of fiction, and is therefore an unreliable source of information'.[134] Or, as discussed by a researcher examining the impact of Twitter on communicating information on the H1N1 flu virus, the 'Internet can be a tinderbox for misinformation that causes a wildfire in today's rapid communication environment'.[135] While she notes that 'data sharing is not always intentionally malignant', misinformation 'can negatively impact [on] individuals' ways of dealing during times of crisis … [and] can cause individuals to avoid life-saving measures because there is a vacuum of correct information'.[136] These issues can be exacerbated because there are few filters, or checks and balances, in place to verify materials communicated by social media.[137] This is in contrast to traditional media where stories and photos are subject to multiple layers of editing, fact-checking and legal review prior to publication. Without these additional safeguards in place on most social media platforms, it is easy to disseminate misinformation and difficult to differentiate between reliable and unreliable data.

Such problems can be exacerbated by the chaotic environment of armed conflict. The way in which data is collected and evaluated for the LRA Crisis Tracker website provides an interesting example. In explaining the methodology, the site developers acknowledge that '[a]ccess to reliable data sources is uneven across areas where the LRA is operating'.[138] As a result, they caution that, 'data quality can vary, and information from many attacks may not be recorded in the Database'. The information is therefore impressionistic rather than a comprehensive credible account. In order to counterbalance the inconsistent information, the group developed a rating system for the reliability of the data based on the original sources. While this system is far more developed than most reporting based on witness and social media accounts, it still raises

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[133] ibid.

[134] Kathleen Minotti, 'The Advent of Digital Diaries: Implications of Social Networking Web Sites for the Legal Profession' (2009) 60 South California Law Review 1057.

[135] Tonya Oaks Smith, 'A Little Birdie Told Me: H1N1 Information and Misinformation Exchange on Twitter' (William H Bowen School of Law Legal Studies Research Paper No. 11-03) 27.

[136] ibid 46.

[137] Clay Shirky, 'It's not Information Overload, it's Filter Failure' (Lecture to Web 2.0 Expo NY, 2008), http://blip. tv/web2expo/web-2-0-expo-ny-clay-shirky-shirky-com-it-s-not-information-overload-it-s-filter-failure-1283699 (remarking that few pre-publication filters exist on social media platforms as a result of the low costs of producing information).

[138] Invisible Children and Resolve, 'Map Methodology & Database Codebook v1.3' (*LRA Crisis Tracker*, 2012), http://www.lracrisistracker.com/sites/default/files/Map-Methodology-and-Database%20Codebook%20v1.0.pdf.

significant questions regarding the ability to ever really acquire reliable information during armed conflict. Moreover, just because a source is generally reliable does not mean all information gathered by that source can be deemed credible or that specific pieces of data should be exempt from scrutiny.[139]

Similar to the issues that arise with the LRA Crisis Tracker, photographic evidence and videos, such as those shared on Flickr or YouTube, can be transmitted to millions within seconds,

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[139] Despite acknowledging the variance in data quality, it is surprising that in the LRA Crisis Tracker coding system, 'Human Rights Watch (HRW) reports are given a verification rating of 5 [the highest ranking] and considered confirmed reports due to their rigorous and thorough research methods': LRA Crisis Tracker (n 138). Several research studies, however, have systematically detailed severe methodological flaws in HRW's reporting practices, reinforcing the idea that these publications should not be relied on without independent verification: Steinberg, Herzberg and Berman (n 51). For instance, a study conducted by Professors Gerald Steinberg and Abraham Bell of Bar Ilan University, evaluating the reporting of HRW and Amnesty International during the 2006 war between Israel and Hezbollah, found that in 'nearly every case, [HRW's] initial estimation of Lebanese casualties was exaggerated' and 'the lack of reliable sources of information [was] prominent' (ibid). The study concludes that '[HRW's] reports were closer to unverified claims than researched conclusions'. In parallel, William Arkin, an independent researcher and former senior military analyst for HRW, conducted an independent analysis of the Lebanon War while serving as the military adviser to the UN fact-finding mission (ibid). The study contradicted many of HRW's claims, while applying more rigorous methodological standards.

Similar conclusions were reached by scholars from the University of London and the Conflict Analysis Resource Center (CERAC), a Bogota-based conflict think tank. In their 2007 study (Andres Ballesteros and others, 'The Work of Amnesty International and Human Rights Watch: Evidence from Colombia', 1 February 2007, http://www.scribd.com/doc/30748914/The-Work-of-Amnesty-International-and-Human-Rights-Watch-Evidencefrom-Colombia), they found that HRW followed a 'non-systematic approach that includes opaque sourcing and frequent changes in the objects they measure'. Moreover, their research showed 'a failure to specify sources, unclear definitions, an erratic reporting template and a distorted portrayal of conflict dynamics' among the methodological problems with HRW's publications (ibid). Furthermore, the report accuses HRW of 'bias against the government relative to the guerrillas'.

The reliability of HRW reporting has also been called into question at the ICC. In the case of *Prosecutor v Callixte Mbarushimana*, defence counsel objected to an attempt by the Prosecutor to admit HRW reports into evidence (ICC, *Prosecutor v Callixte Mbarushimana*, Hearing, ICC-01/04-01/10-T-7-RED, Pre-Trial Chamber I, 19 September 2011, 73). Counsel expressed concern that these reports did not 'base their assertions on interviews with victims. They merely make a reference to second–hand hearsay emanating from unidentified and unidentifiable villages' (ibid). Counsel also raised the issue of significantly inconsistent casualty figures:

> Why did Human Rights Watch say in February that dozens of civilians were killed … only to change this figure to seven in the December 2009 report? Did people come back from the dead? What does this tell us about Human Rights Watch's working methodology? What does this tell us about Human Rights Watch's statistics? (ibid 80)

Based on these arguments, the Court ruled:

> 78. The evidentiary weight to be attached to the information contained in documents emanating from Human Rights Watch will be assessed on a case-by-case basis. As a general principle, the Chamber finds that information based on anonymous hearsay must be given a low probative value in view of the inherent difficulties in ascertaining the truthfulness and authenticity of such information.

(ICC, *Mbarushimana*, Decision on the Confirmation of the Charges, ICC-01/04-01/10, Pre-Trial Chamber I, 16 December 2011).

In another case, *Prosecutor v Germain Katanga & Mathieu Ngudjolo Chui*, the Court excluded HRW reports, as well as other NGO publications (publications by Amnesty, FIDH and the International Crisis Group were also excluded) specifically over issues relating to reliability (ICC, *Prosecutor v Germain Katanga & Matheiu Ngudjolo Chui,* Decision on the Prosecutor's Bar Table Motions, ICC-01/04-01/07, Trial Chamber II, 17 December 2010).

but they may not provide the whole 'picture' of an event. One telling incident highlights this issue. Just prior to his release at the Rafah border between the Gaza Strip and Egypt, kidnapped Israeli soldier, Gilad Shalit, was interviewed by Egyptian TV. The broadcast showed an uncomfortable Shalit, answering questions posed by anchor, Shahira Amin. After heavy criticism for the timing and the nature of her questions, which some deemed to be insensitive, Amin claimed that Shalit had been under no duress to participate.[140] Subsequently released photographs of the affair – which panned out from the image seen on TV – revealed, however, that a masked Hamas guard was in the room standing directly behind Shalit during the interview.[141] Although the issue of context can also be a problem with more traditional forms of media, it is particularly acute with social media because of the ability to spread information exponentially to hundreds of millions of users in a short amount of time. Once such information is transmitted over such a large and disparate group of people, it can be difficult to correct the record.

The sheer volume of social media information is another factor that impacts on and can hamper the reliability of IHL monitoring and reporting, which is critical for providing an appropriate humanitarian response. How can so much information be tracked? What should be tracked? How do you choose the best sources? What do the sources mean? As noted by one health researcher, 'the possibility of information overload, or "the state of an individual or a system in which excessive communication inputs cannot be processed and utilized, leading to breakdowns"' is a 'prime problem seen with using Twitter as a communication vehicle for important information'.[142] Given this mass amount of data, another commentator observes that 'real-time channels will tend to refract what's happening. If the problem of top-down charismatic leadership is that most voices don't get heard, the challenge for distributed leadership is coming up with a way to get harmony and focus'.[143]

The phenomenon of information overload in social media is further aggravated by the trend in conflict reporting, where often generalised conclusions regarding violations of law are posited based on a few anecdotal incidents.[144] This trend is especially problematic where, as noted by Elana Baylis, 'investigators cannot accurately generalize from one or two examples to the whole', when 'there are widely disparate conditions on the ground'.[145] Therefore, a few tweets

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[140] See N MacFarquhar, 'Sharp Criticism for Egyptian Interview with Soldier', *The New York Times* (18 October 2011); Ha'aretz and Associated Press, 'Gilad Shalit's Egyptian TV Interview Comes under Fire in Israel' (*Ha'aretz*, 18 October 2011), http://www.haaretz.com/news/diplomacy-defense/gilad-shalit-s-egyptian-tv-interview-comes-under-fire-in-israel-1.390827.

[141] See Ha'aretz, ibid; 'Egyptian Journalist Insists She Didn't Pressure Shalit' (*Elder of Ziyon Blog*, 19 October 2011), http://elderofziyon.blogspot.com/2011/10/egyptian-journalist-insists-she-didnt.html.

[142] Oaks Smith (n 135) 9.

[143] Alexis Madrigal, 'The Fog of Twitter' (*Atlantic*, 11 October 2011), http://www.theatlantic.com/technology/archive/2011/10/the-fog-of-twitter-watching-last-nights-protest-arrests-through-occupyboston/246484.

[144] See, eg, ICTY, 'Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia' (1999, para 51), http://www.icty.org/sid/10052 (noting critically that 'much of the material submitted to the OTP consisted of reports that civilians had been killed, often inviting the conclusion to be drawn that crimes had therefore been committed').

[145] Elana Baylis, 'Tribunal-Hopping with the Post-Conflict Justice Junkies' (2009) 10 Oregon Review of International Law 361, 386.

or Facebook postings reporting civilian injury do not provide enough information from which to draw generalised conclusions of IHL violations and, as a result of the disparate reporting, more serious abuses may be overlooked.

5.3.3 AUTHENTICITY

A third critical issue when using social media to monitor for IHL violations, and related to reliability, is the ease with which false personas can be adopted and exploited on these platforms. Because of its popularity and massive number of participants, there is a veneer of 'democratic' authenticity to social media. Social media critic, Professor Evgeny Morozov, remarks how it is perceived to be imbued with 'nearly magical qualities'.[146] This 'halo effect' persists even though in 'many contexts, [social media] empowers the strong and disempowers the weak'.[147] This underlying power imbalance is often masked because of the role played by anonymity, a defining feature of many social media platforms, which can directly impact on the reliability of the information generated.[148]

It is common for people to employ pseudonymous usernames when interacting with social media technology, making source verification difficult, if not impossible.[149] In some cases, anonymity facilitates conditions where social media platforms are vulnerable to manipulation. Tactics like 'astroturfing' and 'sockpuppeting' have become common. Astroturfing involves setting up fake internet accounts that 'automatically repost or link to content generated elsewhere' in order to 'reinforc[e] the impression that the account holders are real and active'.[150] Not only do companies utilise this technology to bolster market presence, but many governments have adopted it as well. The US Air Force issued a tender to acquire persona management software which would allow for the creation of '10 personas per user, replete with background, history, supporting details, and cyber presences that are technically, culturally and geographically consistent'.[151] In another case, several partners of the Washington, DC-based lobbying firm, Qorvis, resigned because of the work the company did on behalf of the governments of Equatorial Guinea, Bahrain, Yemen and Saudi Arabia.[152] These services allegedly included

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[146] Evgeny Morozov, *The Net Delusion: The Dark Side of Internet Freedom* (Public Affairs 2011) 'Introduction'.
[147] ibid.
[148] Facebook is a powerful exception to this trend: see Bianca Bosker, 'Facebook's Randi Zuckerberg: Anonymity Online "Has To Go Away"' (*Huffington Post*, 27 July 2011), http://www.huffingtonpost.com/2011/07/27/randi-zuckerberg-anonymity-online_n_910892.html.
[149] Some commentators have noted, however, that anonymity is essential in cases of government repression: see Jemima Kiss, 'Andy Carvin: The Man Who Tweets Revolutions' (*The Guardian*, 4 September 2011), http://www.guardian.co.uk/media/2011/sep/04/andy-carvin-tweets-revolutions (quoting Carvin: 'The reality is that many of my sources would not be alive today if they weren't working under pseudonyms').
[150] George Monbiot, 'The Need to Protect the Internet from "Astroturfing" Grows Ever More Urgent' (*The Guardian*, 23 February 2011), http://www.guardian.co.uk/environment/georgemonbiot/2011/feb/23/need-to-protect-internet-from-astroturfing.
[151] ibid.
[152] Marcus Baram, 'Lobbyists Jump Ship in Wake of Mideast Unrest' (*Huffington Post*, 24 March 2011), http://www.huffingtonpost.com/2011/03/24/lobbyist-mideast-unrest-departures_n_840231.html.

'online reputation management', which involved 'creating fake blogs and websites that link back to positive content' and the 'use of social media, including Facebook, YouTube and Twitter'.[153]

It is also easy to fabricate and widely disseminate false information through social media.[154] This misinformation is often then repeated as a result of a lack of independent verification of these sources. In one notorious example, on 6 June 2011 a post, purportedly written by the cousin of a popular lesbian blogger in Syria, reported that she had been arrested in Damascus after weeks of fleeing security officials.[155] The post received millions of page views, and activists initiated campaigns highlighting her plight and seeking to secure her release, including HRW's Executive Director, Kenneth Roth.[156] It turned out, however, that the blogger was the invention of a 40-year old man based in Istanbul, Turkey.[157]

Hoaxes also played a role in the post-election crisis in Iran where, according to Esfandiari, Twitter had a 'pernicious complicity in allowing rumors to spread' by allowing the dissemination of 'many unsubstantiated reports', such as claims that 'police helicopters were pouring acid and boiling water on protesters' and that opposition leader, Mir Hossein Mousavi, 'had been arrested at his home in Tehran'.[158] Another hoax on Twitter involved the story of Saeedeh Pouraghayi, an Iranian woman, who was alleged to have been raped and murdered by the regime.[159] Yet, she later appeared on state television and some claimed that the story was planted by the Iranian government to 'cast doubt on the opposition' and to 'pave the way for further arrests of opposition leaders'.[160]

5.3.4 RETALIATION/INTERFERENCE WITH MONITORING

A fourth significant problem that may result from using social media to report on IHL violations are acts of retaliation and censorship by states or armed groups seeking to silence reports or to prevent civilian access to information. These measures can also prevent the international community from carrying out respective legal duties to monitor compliance with IHL. Because social media reporting can emanate from a significantly larger group of people than more traditional forms of media, there is a greater chance that belligerent parties may impose far-reaching measures to block information. Also, because the information generated by social media can

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[153] ibid.

[154] See Hokky Situngkir, 'Spread of Hoax in Social Media' (Bandung Fe Institute Working Paper, 4 May 2011) (examining the case of Indonesia).

[155] Nidaa Hassan, 'Syrian Blogger Amina Abdallah Kidnapped by Armed Men' (*The Guardian*, 7 June 2011), http://www.guardian.co.uk/world/2011/jun/07/syrian-blogger-amina-abdallah-kidnapped.

[156] @Kenroth, *Twitter*, 7 June 2011: 'Guardian: #Syria blogger kidnapped by armed men. Had written on uprising, politics, being a lesbian.http://bit.ly/mTc79v'.

[157] 'Gay Girl in Damascus: Second "lesbian" blogger is a man' (*BBC News*, 14 June 2011), http://www.bbc.co.uk/news/world-us-canada-13760208; '"Kidnapped" Lesbian Syrian's Blog a Hoax, Written by a Man' (*HuffingtonPost*, 12 June 2011), http://www.huffingtonpost.com/2011/06/12/lesbian-syrian-blogger-ac_n_875639.html.

[158] Esfandiari (n 132).

[159] ibid.

[160] ibid.

be highly graphic and revealing, and lead to more immediate international responses, armed forces may seek to retaliate in particularly violent ways that go beyond mere censorship to silence monitors.

Under the IHL rule of distinction, civilians cannot be the object of attacks, and certain protected groups – such as medical personnel, humanitarian workers, peacekeepers, officials from international organisations[161] and journalists – are also granted civilian status under the rules. Although the IHL instruments do not specifically state that interference with IHL monitoring mechanisms are a violation of the law, to block these mechanisms or to conduct attacks on those carrying out those functions certainly would be a violation of Article 1, which requires 'respect' for the Conventions in 'all circumstances'.

During the 2011 Arab Spring, social media was used to energise and activate mass protest and democratisation movements, as well as to notify the world of IHL violations which included the deliberate targeting of civilians by armies and rebel groups.[162] As a result,[163] the governing regimes in Libya, Syria and Iran imposed broad censorship of social media sites and, in some cases, completely blocked access to the internet.[164] These measures were taken in order to suppress political dissent and to control access to independent sources of information. They were also used to cover up mass violations against the civilian populations that may have amounted to war crimes or crimes against humanity. Bloggers and other online activists were harassed, imprisoned, tortured and killed for being security threats or opponents of the regime.[165]

In April 2008, Turkey instituted a ban on YouTube that was in place for nearly three years, and intermittent restrictions are still imposed.[166] In addition to YouTube, the country has blocked more than 5,000 internet sites that refer to Kurdish minorities and the Armenian genocide, as well as pages that are critical of Ataturk, the army and the country.[167]

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[161] Convention on the Safety of UN Personnel (entered into force 15 January 1999) 2051 UNTS 363, art 7(2).

[162] See Gilad Lotan and others, 'The Revolutions were Tweeted: Information Flows during the 2011 Tunisian and Egyptian Revolutions' (2011) 5 International Journal of Communication 1376.

[163] See, eg, Evgeny Morozov, 'Political Repression 2.0' (*The New York Times*, 1 September 2011), http://www.nytimes.com/2011/09/02/opinion/political-repression-2-0.html; Anne Nelson, 'The Limits of the "Twitter Revolution"' (*The Guardian*, 24 February 2011), http://www.guardian.co.uk/commentisfree/cifamerica/2011/feb/24/digital-media-egypt; Ethan Zuckerman, 'The First Twitter Revolution?' (*Foreign Policy*, 14 January 2011), http://www.foreignpolicy.com/articles/2011/01/14/the_first_twitter_revolution; Gladwell and Shirky (n 22); Jeffrey Rosen, 'The Web Means the End of Forgetting' (*The New York Times Magazine*, 21 July 2010), http://www.nytimes.com/2010/07/25/magazine/25privacy-t2.html?pagewanted=all. One group of scholars is creating an alternative internet to circumvent government repression: see Jeffrey R Young, 'Fear of Repression Spurs Scholars and Activists to Build Alternate Internets' (*Chronicle of Higher Education*, 18 September 2011), http://chronicle.com/article/Fear-of-Repression-Spurs/129049.

[164] See Kendra Srivastava, 'Syrian Protestors Scared to Use Facebook, Twitter' (*Mobiledia*, 3 August 2011), http://www.mobiledia.com/news/101219.html; New America Foundation and Arizona State University webcast, 'How to Ignite, or Quash, a Revolution in 140 Characters or Less' (*Slate Magazine*, 13 July 2011), http://newamerica.net/events/2011/ignite_or_quash_revolution.

[165] Although not in the context of armed conflict, the case of Saudi blogger, Hamza Kashgari, arrested for 'blasphemous tweets', represents another example where utilising social media can endanger activists: see Denis MacShane 'Why a Tweet Can Kill' (13 February 2012), http://www.denismacshane.com/?p=1137.

[166] See Ece Toksabay, 'Turkey Reinstates YouTube ban' (*Reuters*, 3 November 2010), http://www.reuters.com/article/2010/11/03/us-turkey-youtube-idUSTRE6A227C20101103.

[167] ibid.

Following elections in November 2011, the Congolese authorities banned the use of SMS messaging and other access to social media networks via mobile phones, ostensibly in order to control protests against the outcome.[168] This action, however, removed a vital form of communication for civilians navigating the highly complex armed conflict in that country.[169] In addition to general communication, SMS is often used in isolated regions of the DRC as an alert system to rebel activity.[170] Furthermore, banning SMS may have significant implications for IHL monitoring projects, such as the Voix des Kivus, which relies upon SMS messaging data for information and reporting. Deaf Congolese, who constitute a higher proportion of the population than the international average and rely heavily on text messaging, have been particularly hard hit by the ban, leaving them even more vulnerable to potential violence.[171]

In August 2008, as part of military operations in its armed conflict with Georgia, Russian intelligence services utilised social media to carry out cyber attacks against Georgian government websites.[172] The attacks were used to disseminate propaganda and to disrupt the flow of official communications, depriving the civilian population of potentially vital information.[173]

In addition, social media projects managed by international organisations in remote locations that require on-the-ground reporting may endanger locals who are responsible for gathering data as a result of the inability to access intensely violent conflict zones. For instance, researcher Bridget Guarasci found that in Iraq and Somalia locals may be exposed to risk if they are caught possessing technology like GPS machines that may identify them as 'collaborating' with international organisations.[174] Crowdsourcing maps may unintentionally provide armed forces with the locations of civilians, enabling the forces to more easily track and target them.[175]

The tracking of social media activity to retaliate against wrongs committed and to perpetrate indiscriminate attacks has become a real concern in Mexico. In the conflict, civilians using social media to avoid checkpoints or to communicate information can become the target of violence by both drug paramilitaries as well as the government.[176] As reported in *The New York Times*, two individuals who tweeted about a pending attack by a drug cartel on a Veracruz school were

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[168] See Nicoletta Zappile, 'Congo Shuts Down SMS' (*The Global Journal*, 9 December 2011), http://theglobaljournal.net/article/view/413.

[169] See Chris Welch, 'SMS and Social Media Banned in Congo, Deaf Residents Lose Critical Means of Contact' (*The Verge*, 19 December 2011), http://www.theverge.com/2011/12/19/2646721/sms-social-media-banned-congo.

[170] ibid; Thomas Hubert, 'DR Congo Election: Deaf Anger at Ban on Texting' (*BBC News*, 14 December 2011), http://www.bbc.co.uk/news/world-africa-16187051.

[171] Doug Rule, 'Congo Bans Text Messages, Falls on Deaf Ears' (*Forbes*, 16 December 2011), http://www.mobiledia.com/news/120980.html.

[172] See Mark Rutherford, 'Report: Russian Mob Aided Cyberattacks on Georgia' (*Cnet*, 18 April 2009), http://news.cnet.com/8301-13639_3-10312708-42.html.

[173] See Neil Arun, 'Caucasus Foes Fight Cyber War' (*BBC News,* 14 August 2008), http://news.bbc.co.uk/2/hi/europe/7559850.stm.

[174] See Bridget Guarasci, 'GPS Humanitarianism' (*Slate*, 28 September 2011), http://www.slate.com/articles/health_and_science/future_tense/2011/09/gps_humanitarianism.html.

[175] Thanks to Dr Heather Harrison Dinniss of the Swedish National Defence College for her comments on this issue.

[176] J David Goodman, 'In Mexico, Social Media Become a Battleground in the Drug War' (*The New York Times*, 15 September 2011), http://thelede.blogs.nytimes.com/2011/09/15/in-mexico-social-media-becomes-a-battleground-in-the-drug-war (quoting Nicholas Goodbody).

arrested on charges of terrorism and sabotage.[177] In another notorious case, a cartel murdered two people who had posted information on websites that issue bulletins about drug activity.[178] The cartel suspended the victims from a highway overpass to serve as a warning to other 'internet snitches' who might use social media to inform the public about gang activity.[179]

Even social media sites which claim to foster government accountability have placed civilians at risk through disclosure of classified materials. For instance, diplomatic cables released by WikiLeaks that revealed the names of regime opponents in Belarus, Zimbabwe and Iraq have led to reprisals that include harassment, torture and, in some cases, death.[180] Some NGOs have expressed concern that renewed international interest in a military campaign to capture Joseph Kony, leader of the Lord's Resistance Army, sparked by the viral Kony 2012 video (see discussion below), may place civilians at increased risk of violence as a result of retaliation by LRA activists.[181]

5.3.5 CONFIDENTIALITY

Privacy is another serious concern that can be compromised in the social media domain. One of the increasing areas of focus under IHL is the attention that is paid to preventing sexual crimes, such as rape, prostitution and sexual slavery. The Fourth Geneva Convention specifically prohibits rape and forced prostitution.[182] Additional Protocol I notes that women are the object of 'special respect' and 'protected in particular' against sexual violence.[183] International tribunals have also specifically addressed these crimes, and are increasingly doing so.[184]

The use of social media in situations where sexual violence is occurring could be especially problematic. Because of the potential to disseminate material exponentially in a very short amount of time, as well as the lack of responsible filtering on social media platforms, it does not take much effort to lose control of sensitive or confidential information. Names of rape victims could be made public, thus causing further humiliation, intimidation and abuse. It may also expose witnesses and victims to danger or put them at risk of reprisals should they cooperate with international tribunals or other law enforcement. Moreover, even in the absence of social media,

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[177] ibid; Cave (n 91).

[178] Goodman (n 176).

[179] ibid.

[180] See Kapil Komireddi, 'Wikitargeted' (*Tablet Magazine*, 4 October 2011), http://www.tabletmag.com/news-and-politics/79749/wikitargeted (noting that in December 2010, one of WikiLeaks' content aggregators provided unredacted diplomatic cables to the Belarus government which were not available online at the time); 'Zimbabwe: WikiLeaks Disclosures Upset Mugabe' (*Global Post*, 16 September 2011), http://www.globalpost.com/dispatch/news/regions/africa/zimbabwe/110915/zimbabwe-wikileaks-disclosures-upset-mugabe; Roy Gutman, 'WikiLeaks Shakes Security of Iraq's Tiny Jewish Community' (*McClatchy*, 7 October 2011), http://www.mcclatchydc.com/2011/10/07/126581/security-of-iraqs-tiny-jewish.html.

[181] Polly Curtis, 'Hunt for Joseph Kony Will Kill More Innocent People, Charities Warn' (*The Guardian*, 19 April 2012), http://www.guardian.co.uk/world/2012/apr/19/hunt-joseph-kony-kill-innocents.

[182] GC IV (n 28) art 27.

[183] Additional Protocol I (n 28) art 76.

[184] See, eg, Valerie Oosterveld, 'The Gender Jurisprudence of the Special Court for Sierra Leone: Progress in the Revolutionary United Front Judgments' (2011) 44 Cornell International Law Journal 49.

there is a vast amount of under-reporting of sexual crimes. The potential for exposure of sensitive information to millions of people could dampen the willingness of victims to come forward.

5.4 Using Social Media to Promote Violations of IHL

Not only are there many limitations on using social media for IHL monitoring, the medium itself can become a weapon in conflict and, in particular, be used against civilian populations. Despite the IHL prohibition of directing attacks against the civilian population, some non-state actors have gone so far as to use social media to deliberately advocate for indiscriminate attacks and other war crimes. Because of the lack of filtering mechanisms that exist in more traditional forms of media, it is far more likely that these types of communication are disseminated widely to people who are able to carry out the directives. They can then be used to terrorise the civilian populations and incite others to act illegally. In one particularly shocking case, a Hamas-affiliated Saudi cleric, Awad al-Qarni, posted on his Facebook page that he would offer a $100,000 reward to anyone who kidnapped an Israeli soldier. Within hours, his offer had received more than 1,000 'Likes'.[185] The terrorist organization, Hamas, has used websites such as Google Earth to facilitate its targeting in order to perpetuate indiscriminate rocket attacks on the civilian population of Israel.[186] Social media has also been used by armed groups to threaten attacks on the civilian population in Somalia and Mexico.[187] These types of activity also clearly violate the Article 1 requirement to 'respect' the Conventions at all times.

6. Enforcement

As discussed, social media can play a beneficial role in helping to disseminate and educate about the rules of IHL and can in some respects, despite the limitations, facilitate monitoring compliance with IHL. Whether social media can play a useful role in assisting in carrying out IHL enforcement mechanisms – in particular, official fact-finding, capture and arrest, and prosecution – is less clear.

Enforcement is a critical component of IHL, without which the rules would have little impact. Under IHL, states (and, in some cases, non-state actors) are obligated to prevent, suppress and prohibit violations of conventions to which they are parties, as well as under customary

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[185] Roee Nahamia, 'Saudi Cleric: Kidnap Soldier Get $100,000' (*Ynetnews*, 25 October 2011), http://www.ynetnews.com/articles/0,7340,L-4138982,00.html.

[186] Sharon Weinberger, 'Gaza's Rocket Men Shoot for the Moon' (*Slate*, 8 July 2011), http://www.slate.com/articles/news_and_politics/dispatches/features/2011/dispatches_from_gaza/gazas_rocket_men_shoot_for_the_moon.html.

[187] See eg @HSMPress, al-Shabbab *Twitter* account, 23 February 2012: threatening 'The fate of #Kenyan PoWs is in the hands of Kenyan population. Either heed their calls or send them to the guillotine – The choice is YOURS!'); 17 February 2012: 'HSM hereby warns all Muslims of Somalia to stay away from the enemy bases in order to avoid being unintentional victims of this new campaign'; Jeffrey Gettleman, 'Somalia's Insurgents Embrace Twitter as a Weapon' (*The New York Times*, 14 December 2011), http://www.nytimes.com/2011/12/15/world/africa/somalias-rebels-embrace-twitter-as-a-weapon.html; Cave (n 91).

law.[188] The corpus of IHL puts an emphasis on punishing violators with appropriate compensatory, penal or disciplinary sanctions. For instance, Article 3[189] of the 1907 Hague Convention mandates that

> [a] belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces.

IHL requires all states to adopt national legislation to impose penalties on nationals or other persons within that state's jurisdiction, and through the exercise of universal jurisdiction if necessary.[190]

6.1 FACT-FINDING/INVESTIGATION

Another critical component of IHL enforcement includes the use of investigative and fact-finding mechanisms in cases where credible reports of violations of IHL have been alleged or are suspected.[191] This obligation is derived from Article 1 of the Geneva Conventions and is not only placed on the belligerent parties, but is thought to also apply to all states. Article 7 of Additional Protocol I allows for the convening of meetings of the high contracting parties 'to consider general problems concerning the application of the Conventions and of the

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[188] See, eg, Convention on the Prevention and Punishment of the Crime of Genocide (entered into force 12 January 1951) 78 UNTS 1021 (Genocide Convention), art 1 ('The Contracting Parties confirm that genocide … is a crime under international law which they undertake to prevent and to punish'); Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (entered into force 5 October 1978) 1108 UNTS 151, art 4; Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects – Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II) (entered into force 2 December 1983) 1342 UNTS 137, art 14(1); Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (entered into force 1 March 1999) 2056 UNTS 211, art 9.

[189] Hague Convention (n 28) art 3.

[190] See, eg, GC IV (n 28) art 146 ('High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention'); Genocide Convention (n 188) art 5; Cultural Property Convention (n 37) art 28 (obliging 'States Parties to take, within the framework of their criminal jurisdiction, all the steps needed to prosecute and impose penal or disciplinary sanctions on persons of whatever nationality who have committed or ordered the commission of a breach of the Convention'); Cultural Property Convention Protocol II (n 37) art 19 (state parties are obliged 'to establish as criminal offences under their domestic law serious violations of the Protocol, intentionally committed, in the form of attacks against property under enhanced protection, or the extensive destruction or appropriation of property'); Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (entered into force 25 March 1975) 1015 UNTS 165, art 1; the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (entered into force 29 April 1997) 1974 UNTS 45, art VII.

[191] Michael Schmitt, 'Investigating Violations of International Law in Armed Conflict' (2011) 2 Harvard National Security Journal 31, 39, 79. According to Schmitt, the duty to investigate is triggered 'whenever a reasonable commander in the same or similar circumstances would, based on the information before him or her, suspect a violation': ibid 72.

Protocol'.[192] Under Article 149, a party to a conflict may request that 'an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention'.[193] Article 90(2)(c)(i) of Additional Protocol I calls for the establishment of an international fact-finding commission to 'inquire into any facts alleged to be a grave breach … or other serious violation of the Conventions or [the] Protocol'.[194] According to the ICRC customary law rule 158, 'states must investigate war crimes committed by their nationals, or on their territory … They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects'.[195]

On occasion, states may entrust this duty to international organisations such as the UN to carry out fact-finding missions under the auspices of, for example, the UN Secretary General or the Human Rights Council. The EU has also empanelled missions to investigate whether violations of IHL have occurred in situations of armed conflict.[196] Although they do not have formal investigatory authority under IHL, the ICRC and many NGOs take fact-finding and investigatory roles upon themselves and frequently contribute to official frameworks.

6.1.1 Social Media and Legal Complexity

A major limitation of using social media for official investigation and fact-finding inquiries (and that can also impact on future prosecution) is that most of these platforms do not facilitate the communication of complex ideas or provide context for complicated events. Morozov has remarked that reliance on social media often 'prioritizes the tool over the environment, and, as such, is deaf to the social, cultural, and political subtleties and indeterminacies … it ignores context and entraps policymakers into believing that they have a useful and powerful ally on their side'.[197]

This myopic approach can be especially problematic when trying to ascertain whether a violation of IHL has actually taken place because it is uncertain if the law's complexity, nuance and context can be conveyed adequately through social media technology. As a body of law, IHL has become 'highly technical, susceptible to different legal interpretations and embodied in a complicated inter-woven network of conventions as well as entrenched in general international law'.[198] Many key IHL provisions are often difficult to interpret and are undermined by a lack of consensus.[199] Many concepts in IHL have been hotly debated and involve much controversy,

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[192] Additional Protocol I (n 28) art 7.
[193] GC IV (n 28).
[194] Additional Protocol I (n 28). To date, this commission has not conducted any inquiry as a result of lack of state interest.
[195] ICRC Study (n 29).
[196] See, eg, Independent International Fact-Finding Mission on the Conflict in Georgia (2009), http://www.ceiig.ch.
[197] Morozov (n 146).
[198] David Kaye, 'Complexity in the Law of War' in Russell A Miller and Rebecca M Bratspies (eds), *Progress in International Law* (Martinus Nijhoff 2008) 681 (citing Ingrid Detter).
[199] ibid.

including the application of the principle of proportionality, the concept of direct participation of civilians in hostilities, and the overlap between IHL and human rights norms.

Information generated by social media, particularly if it is interpreted by those without the requisite legal or military expertise, may further complicate the legal analysis of a particular event where IHL is implicated. Crowdsourcing tools, such as Ushahidi, may help to identify the location of an armed conflict or the outcome of an event (for example, 'two people killed'), but it offers only limited utility in determining whether IHL violations have taken place. Similarly, Amnesty's Eyes on Darfur project, which used satellite imagery to map destroyed buildings in villages subject to armed conflict in Sudan, claimed that such imagery would provide 'unimpeachable evidence' of war crimes.[200] Yet, these images did not show the context of the battle, how the buildings were destroyed, who destroyed the buildings, whether the destroyed buildings were military objectives, whether combatants were present at the time of the fighting, and other critical components necessary for making a determination as to whether an IHL violation had, in fact, occurred.

This problem is compounded by social media sites that allow only limited amounts of information to be transmitted at a given time. Twitter requires users to formulate a communication using only 140 characters (a couple of lines), making complex expression difficult, if not impossible. In one example, Human Rights Watch's Emergencies Director, Peter Bouckaert, tweeted from Syria that '#Syrian army arrests three civilians in Zeiniyah, on #Turkey border'.[201] Like Amnesty's Eyes on Darfur project, however, this micropost lacks the necessary details to evaluate whether there has been a violation of IHL. It is unclear what message Bouckaert was trying to communicate, or what use can be made at all of this information.

6.1.2 BATTLE OF NARRATIVES

Based on the difficulties involved in expressing complex legal ideas and providing context, as well as reliability and authenticity concerns, it is very easy for social media to devolve into a 'battle of narratives' rather than a medium that can provide credible information for IHL fact-finding and investigatory mechanisms.

The 2010 and 2011 Gaza flotillas are indicative of this 'battle of narratives' effect. Social media played a key role prior to the flotilla launches as well as in their aftermath. These events provide insight as to how social media might factor in future armed conflicts.

From the outset, generating publicity was the primary objective of the flotilla organisers:[202]

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[200] Amnesty International (n 105).

[201] @bouckap, *Twitter*, 18 June 2011.

[202] See Intelligence & Terrorism Information Center (ITIC), 'Inside documents of the Free Gaza movement' (27 June 2010) (Free Gaza Memo) 10–11, http://www.terrorism-info.org.il/data/pdf/PDF_10_155_2.pdf. The document also discusses the preparation of an immediate follow-up mission because it 'will generate more media and keep the drama of the situation in the forefront', as well as proposed media strategies should activists decide to use a 'long-term jail strategy': ibid 12, 17–18.

> The goal of this mission is to generate a lot of media about the blockade in Gaza … Secondly, but connected is the goal of taking legal/political action … to take punitive action towards Israel. Our position, then, is that reaching Gaza, while our intention is not our minimum strategic goal.

A key component of the media strategy was to establish a narrative depicting the boat passengers as non-violent peace activists seeking to bring humanitarian aid to 'besieged' Gaza.[203] The activists planned to harness social media by utilising blogs, YouTube and Twitter to spread this message 'pre-mission', 'during mission', and at 'entry'.[204] The main organisers, the Free Gaza Movement and the Turkish IHH organisation, utilised social media outlets to recruit volunteers, advertise their plans and generate public interest. Once the sailing was under way, participants on the boat established a media control centre and dozens of journalists were embedded on board.[205] Throughout the journey, passengers provided social media updates and shot video.

These communications were used to reinforce the narrative impression created by the flotilla organisers prior to the launch. This impression was bolstered because these communications were seen as 'real time' eyewitness observations rather than statements made by advocates with a specific political agenda. It was often unclear, however, whether information contained in the social media updates actually originated from passengers on ships where activity was taking place. For example, at 12:20 am on 31 May 2010, one Twitter user, 'Omar Gaza' reported: 'I have news confirming that Israel is trying 2 stop the big cargo ship 2 take control of it!'[206] Yet, the Israeli operation to board the *Mavi Marmara*[207] did not begin until 4:26 am, more than four hours later. Omar Gaza is actually Omar Ghraieb, a 'journalist-translator' based in Gaza.[208] It is unknown from whom he got this information, or if he had an official connection to the flotilla.

Another prominent meme developed in advance by the flotilla organisers was to create an image of the Israeli soldier as a brutal oppressor intent on targeting civilians and violating IHL by committing 'war crimes' and other violations.[209] One of the leaders of Free Gaza went

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[203] See, eg, Ahalem Helwa, 'Twitter for the Gaza Freedom Flotilla' (*The Palestine Activists Handbook*, 29 May 2010), http://tpah.wordpress.com/tag/gaza-freedom-flotilla-palestine; Greta Berlin, 'Gaza Fever' (*Centre for Research on Globalization*, 21 May 2010), http://www.globalresearch.ca/index.php?context=va&aid=19266.

[204] Free Gaza Memo (n 202) 16–17; see also Genevieve Long, 'Foreign Flotilla of Ships Bound for the Gaza Strip' (*Epoch Times*, 24 May 2010), http://www.theepochtimes.com/n2/world/foreign-flotilla-of-ships-bound-for-the-gaza-strip-35886.html (Twitter feed called on followers 'to be ready to express your outrage if we are stopped').

[205] The Public Commission to Examine the Maritime Incident of 31 May 2010: The Turkel Commission, 'Report: Part One' (January 2011) (Turkel Report) n 213 at 206–08, http://www.turkel-committee.com/files/wordocs/8808report-eng.pdf.

[206] @Omargaza, *Twitter*, 31 May 2010.

[207] The *Marmara* was the largest ship in the convoy and it was where the primary and extensive violent confrontation took place.

[208] Omar Ghraieb, 'Gaza: In the Eyes of the Beholder', http://www.gazatimes.blogspot.com.

[209] See, eg, Ewa Jasiewicz, 'A Force More Powerful' (*The Electronic Intifada*, 17 May 2010), http://electronicintifada.net/content/force-more-powerful/8826; Free Gaza Movement, 'Israel's Intimidation Tactics Won't Stop Us: First Ship Sets Sail for Gaza!' (15 May 2010), http://www.freegaza.org/en/home/56-news/1169-israels-intimidation-tactics-wont-stop-us-first-ship-sets-sail-for-gaza.

so far as to accuse Israel of 'genocide' in Gaza, and described Palestinians as the victims of Israel's 'grand designs'.[210]

About an hour after the violent confrontation on the *Marmara*, Free Gaza tweeted that '[a]t about 4:30 am, Israeli commandos dropped from helicopter onto deck of Turkish ship, immediately opened fire on unarmed civilians'.[211] A second message sent out an hour later stated: 'Israeli radio says that the boats are going to be hauled into Haifa. This was not a confrontation. This was a massacre.'[212] These messages were disseminated even though the passengers on the ship had witnessed[213] a significant armed struggle between the dozen or so Israeli naval forces and 40 core IHH activists on board.[214] It was also known by many passengers that this confrontation had been premeditated by IHH.[215] Thus, the context and full version of the events were hidden in order to further the claim that Israel had violated the law of distinction.

Despite the significant omissions, these tweets, as well as the erroneous legal claim that Israeli forces had deliberately 'massacred' 'unarmed civilians', were repeated by several major news outlets, including CNN, Xinhua, Al Jazeera and AolNews.[216] Some of these initial news accounts claimed that up to 20 activists had been killed.[217] The factual and legal narratives supplied by the flotilla organisers were therefore entrenched. They were then largely adopted into the public

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[210] Berlin (n 203).

[211] @freegazaorg, *Twitter*, 31 May 2010.

[212] The actual source of the Free Gaza tweets is unknown: who disseminated the messages, where that person/s was located, and if that person/s actually witnessed the events.

[213] The IDF recovered many recordings of the incident captured on passenger video cameras and cell phones. Many explicitly showed the extreme violence used by the IHH activists against the Israeli soldiers as they attempted to board the ship. See also ITIC, 'Additional Information about the Violent Intentions of the IHH Operatives' (10 June 2010) 13–14, http://www.terrorism-info.org.il/data/pdf/PDF_19068_2.pdf; Noam Sheizaf, 'Rough Passage' (*Ha'aretz*, 24 September 2010), http://www.haaretz.com/weekend/magazine/rough-passage-1.315481 (describing how several passengers captured and violently disarmed two Israeli soldiers, including taking a pistol and an assault rifle).

[214] These activists allegedly boarded the *Marmara* separately from other flotilla participants. Once on board, they separated themselves out and at times prevented the other passengers from moving freely aboard the ship: Turkel Report (n 205) 206, 208–09. One of these core IHH members had been involved in a terror attack on a Russian ferry in 1996: see ITIC, 'Erdinç Tekir, IHH Operative Wounded Aboard the Mavi Marmara, Participated in the 1996 Terrorist Attack on the Russian Ferry Avrasya' (26 August 2010), http://www.terrorism-info.org.il/data/pdf/PDF_10_230_2.pdf.

[215] Internal documents, prepared by Free Gaza prior to sailing, indicate that the organisers planned 'putting obstructions with sharp points on the deck' to obstruct soldiers and debated asking 'VIPs' to take part in 'resistance' against Israeli forces'. The document also proclaims that 'the only way for Israel to stop us is to use force': Free Gaza Memo (n 202*)* 14 ('On this next mission, we will be traveling with VIPs. Is there a likelihood that they will be willing to take action to resist interference from Israel? Not likely, though we can ask'). One passenger detailed how the core activists developed specific plans to confront the Israeli soldiers: see Sheizaf (n 213).

[216] See CNN Wire Staff, 'Israeli Assault on Gaza-bound Flotilla Leaves at least 9 Dead' (*CNN*, 1 June 2010), http://edition.cnn.com/2010/WORLD/meast/05/31/gaza.protest; 'Latest Developments: Israeli Raid on Flotilla' (*CNN*, 31 May 2010), http://news.blogs.cnn.com/2010/05/31/latest-developments-raids-in-gaza; 'Israel Attacks Gaza Aid Fleet' (*Al Jazeera*, 31 May 2010), http://english.aljazeera.net/news/middleeast/2010/05/201053133047995359.html; Theunis Bates, 'Israeli Flotilla Raid Draws Protests and Condemnation' (*AolNews*, 31 May 2010), http://www.aolnews.com/2010/05/31/at-least-10-dead-after-israel-storms-aid-flotilla; 'Israeli Navy Clashes with Gaza-bound Aid Flotilla Activists' (*Xinhua News*, 1 June 2010), http://news.xinhuanet.com/english2010/world/2010-06/01/c_13326087.htm.

[217] See, eg, *Al Jazeera*, ibid.

record at an emergency session of the UN Security Council on 31 May 2010 and an 'urgent debate' at the UN Human Rights Council (UNHRC) on 1–2 June 2010.[218]

Around 10:00 am on 31 May, the Israeli military employed social media to provide missing context, but also to promote the Israeli narrative of events. Israeli officials began to develop new media strategies during the Gaza War from December 2008 to January 2009, but they did not extensively utilise this form of communication until after the flotilla incident.[219] At 10:42 am, the IDF spokesperson tweeted that 'IDF forces met with pre-planned violence when attempting to board flotilla:http://ht.ly/1RXH1', linking to a preliminary account.[220] At 11:33 am, a message went out stating 'Update: 2 demonstrators found w/firearms & empty magazines after likely ambush against IDF soldiers on flotilla ship'.[221] One hour later at 12:27 pm, a third tweet was issued, '5 soldiers injured during flotilla mission – 2 severely and 3 moderately'.[222]

This emerging narrative was not immediately adopted by the press – perhaps because it was not accompanied by images or other visual proof. At 2:51 pm, however, the IDF released a video clearly showing the attack on its forces as they boarded the *Marmara*. These images were uploaded to the IDF's YouTube account and were widely disseminated on Twitter by official government sources, as well as by pro-Israel activists. It is important to note that the flotilla occurred during the period during which YouTube had been blocked by the Turkish authorities, preventing many Turks from seeing the videos offering the Israeli perspective. The mainstream media only began to show these images several hours later in the early evening of 31 May.[223]

The release of video footage and photos of the passenger attack did not stop the intense international outcry, particularly at the UNHRC session, but eventually in the days and weeks afterwards, the international response became muted and the narrative ultimately shifted in favour of the Israeli side. This narrative shift would have significant impact when activists attempted to launch a second flotilla in May 2011, as well as on the investigation conducted by the UN Secretary General's Palmer Committee, empanelled to examine the incident and provide recommendations to avoid similar scenarios in the future.

The Israeli government, bolstered by activist groups, was able to effectively challenge and counter the flotilla's narrative on several points, including the links between terrorist

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[218] See UN Doc S/PV.6325, 31 May 2010 (the Security Council debate took place at 1:55 pm – only a few hours after the incident); Neil MacFarquhar, 'Security Council Debates Criticism of Israeli Raid' (*The New York Times*, 31 May 2010), http://www.nytimes.com/2010/06/01/world/middleeast/01nations.html; Draft Programme of Work for the 14th Session of the Human Rights Council, 31 May–18 June, 2010, http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/pow.pdf.
[219] Nathan Hodge, 'YouTube, Twitter: Weapons in Israel's Info War' (*Wired*, 30 December 2008), http://www.wired.com/dangerroom/2008/12/israels-info-wa.
[220] @IDFSpokesperson, *Twitter*, 31 May 2010.
[221] ibid.
[222] ibid.
[223] The reason for the time delay is not known.

organisations and the Turkish IHH,[224] the façade of 'humanitarianism',[225] and that Israeli forces had immediately and indiscriminately fired at unarmed civilians.[226] This was achieved by providing documentary proof (videos, photographs, diary excerpts) from the flotilla activists themselves[227] and utilising social media to spread its account. These efforts were further enhanced after the establishment by the Israeli government of the Turkel Committee, an independent commission of inquiry. The vast majority of the hearings and documentary evidence were made public on its website as well as broadcast on YouTube. The openness employed by Turkel was in stark contrast to the non-public process followed by the UNHRC and Turkish government inquiries. The overwhelming reliance of the Turkish inquiry on social media sources derived solely from the flotilla activists[228] did not bolster the credibility of the Turkish version of events.

Israel's ability to change the narrative through social media also had significant legal consequences. Attempts to prosecute Israelis at the ICC and efforts to prosecute the Israeli commandoes (Turkey posted a list of names on Facebook to aid in this effort) under universal jurisdiction statutes have been unsuccessful.[229] More significantly, prior to the second flotilla in May 2011, the Dutch government designated IHH a terrorist organisation and the US government began to investigate links between the organisers and terrorist groups.[230] Many governments expressed

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[224] See Alfred De Montesquiou, 'Investigator says Flotilla's Donor Linked to Terror' (*Associated Press,* 3 June 2010), http://articles.boston.com/2010-06-03/news/29311365_1_terror-ties-ihh-jean-louis-bruguiere; Carol Migdalovitz, 'Israel's Blockade of Gaza, the Mavi Marmara Incident, and its Aftermath' (*Congressional Research Service*, 23 June 2010) 4, http://assets.opencrs.com/rpts/R41275_20100623.pdf. See also ITIC, 'IHH, which plays a Central Role in Organizing the Flotilla to the Gaza Strip, is a Turkish Humanitarian Relief Fund with a Radical Islamic anti-Western Orientation' (26 May 2010), http://www.terrorism-info.org.il/data/pdf/PDF_10_126_2.pdf.

[225] An internal document stated that reaching Gaza 'while our intention, is not our minimum strategic goal': Free Gaza Memo (n 202) 10–11. The flotilla activists repeatedly rejected offers by the Israeli government and military to dock in Ashdod, where they could unload their cargo and where it would be transported to Gaza after inspection. During searches of the ships following the operation, no humanitarian supplies were found aboard the *Marmara*, *Boat 8000* or *Challenger 1*. The three other boats contained small amounts of medical goods, medicines, toys and construction materials that were given by the Israeli authorities to various UN agencies for distribution in Gaza. See Turkel Report (n 205) 178, 181–82, 193.

[226] See ITIC, 'In a TV Interview, Turkish Journalist Şefik Dinç, who was on the Mavi Marmara and wrote a Book about it, said that No Shots were Fired from the Israeli Helicopters' (5 October 2010), http://www.terrorism-info.org.il/data/pdf/PDF_10_269_2.pdf (Dinc stated, 'I saw with my own eyes that when the soldiers came on helicopters and started landing on the ship, they did not fire. It wasn't until the soldiers were met with resistance and realized that some of their friends' lives were in danger that they began using live ammunition').

[227] See, eg, ITIC 'Additional Information about the Violent Intentions of the IHH Operatives' (10 June 2010) 13–14, http://www.terrorism-info.org.il/data/pdf/PDF_19068_2.pdf.

[228] Turkish National Commission of Inquiry, 'Interim Report on the Israeli Attack on the Humanitarian Aid Convoy to Gaza on 31 May 2010' (September 2010), http://www.mfa.gov.tr/data/Turkish%20Interim%20Report.pdf (examples of citations to social media sources found on pages 9, 11, 13–18).

[229] See, eg, Associated Press, 'Turks Accuse Israel of War Crimes at ICC' (*YnetNews*, 14 October 2010), http://www.ynetnews.com/articles/0,7340,L-3969639,00.html; Aviel Magnezi, 'Report: Turkey Operated Agents in Israel to Track Soldiers' (*Ynetnews*, 26 September 2011), http://www.ynetnews.com/articles/0,7340,L-4127645,00.html.

[230] See Benjamin Weinthal, 'Dutch Government Places IHH on Terror List' (*Jerusalem Post*, 1 May 2011), http://www.jpost.com/International/Article.aspx?id=218594; Joel Mowbray, 'Flotilla Focus Turning to Terror Ties' (*The Washington Times*, 11 August 2010), http://www.washingtontimes.com/news/2010/aug/11/flotilla-focus-turning-to-terror-ties.

disapproval of a second flotilla and warned participants of potential prosecution should they participate.[231] Insurance companies refused to provide the ships in the second convoy with the requisite papers to set sail and the Greek government also intervened.[232]

Probably most important from the Israeli perspective was the subsequent adoption of Israel's legal position on Gaza by the Palmer Report.[233] These positions included the application of maritime law and IHL to the flotilla incident (as opposed to human rights law or a law enforcement paradigm), agreement that Israel's blockade of Gaza was legal, and a statement that the 'uncertain legal status of Gaza under international law cannot mean that Israel has no right to self-defence against armed attacks directed toward its territory'.[234] The report also largely credited Israel's view that 'there exist serious questions about the conduct, true nature and objectives of the flotilla organizers, particularly IHH', as well as that 'Israeli Defense Forces personnel faced significant, organized and violent resistance from a group of passengers when they boarded the *Mavi Marmara* requiring them to use force for their own protection'.[235]

Although both sides engaged in intense social media 'battles' as the launch of the second flotilla approached,[236] as a result of the narrative shift facilitated by social media and coupled with an intense Israeli diplomatic campaign, international consensus was largely against a second flotilla and, ultimately, the new convoy was not able to sail beyond Greece's territorial waters.[237]

6.2 ARREST AND CAPTURE OF SUSPECTED VIOLATORS OF IHL

The legal obligation to enforce IHL by punishing violators includes the affirmative duty to arrest and capture those suspected of committing war crimes. Article 146 of GC IV requires states

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[231] See, eg, European Parliament, Speech of High Representative Catherine Ashton on Main Aspects and Basic Choices of the Common Foreign and Security Policy and the Common Security and Defence Policy, Brussels, 11 May 2011, A 179/11; Shlomo Shamir and DPA, 'Israel: New Gaza Flotilla has Ties to Hamas, Terrorist Organizations' (*Ha'aretz*, 21 April 2011), http://www.haaretz.com/news/diplomacy-defense/israel-new-gaza-flotilla-has-ties-to-hamas-terrorist-organizations-1.357416; 'Rosenthal: Don't Join Gaza Flotilla' (*Radio Netherlands Worldwide*, 26 April 2011), http://www.rnw.nl/africa/bulletin/rosenthal-don%E2%80%99t-join-gaza-flotilla.

[232] See Scott Sayare, 'Israeli Advocacy Group Helps Delay Departure of Gaza-Bound Flotilla' (*The New York Times*, 28 June 2011), http://www.nytimes.com/2011/06/29/world/middleeast/29flotilla.html.

[233] United Nations, Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident, (September 2011) (Palmer Report), http://www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf.

[234] ibid para 72.

[235] ibid paras iv, vii.

[236] Listening Post, 'Gaza Flotilla: A Humanitarian Mission or PR? A Look at the Media War over the Gaza Freedom Flotilla' (*Al Jazeera*, 2 June 2011), http://www.aljazeera.com/programmes/listeningpost/2011/07/2011727382646617.html.

[237] See, eg, Karolyn Coorsh, '"Like for Israel" takes on Flotilla Advocacy' (*Jerusalem Post*, 7 July 2011), http://www.jpost.com/Features/InThespotlight/Article.aspx?id=228279; Natasha Mozgovaya, 'Gaza, the Most Facebook Friendly Place on Earth' (*Ha'aretz*, 5 June 2011), http://www.haaretz.com/print-edition/features/gaza-the-most-facebook-friendly-place-on-earth-1.365970; Jameson Berkow, 'Israeli Government Braces for "Twitter War"' (*The Financial Post*, 26 May 2011), http://business.financialpost.com/2011/05/26/bootup-israeli-government-braces-for-twitter-war.

parties to 'search for persons alleged to have committed, or to have ordered to be committed, such grave breaches'.[238]

Social media potentially can play a role in facilitating the arrest of war criminals. These platforms could be used by law enforcement or international tribunals to solicit information, which may provide evidentiary leads, similar to NATO's programme involving Libya.[239] Social media could also be a useful tool for tracking suspects, though it is not known if it has yet been implemented for this purpose by states or international organisations.[240] Importantly, social media could also be used to widely name and shame those who harbour indicted war criminals. For instance, on 28 June 2011, the ICC Office of the Prosecutor tweeted: 'ICC Prosecutor: It is time for arrests. Justice will be done in Libya.http://bit.ly/kst0Ya'.[241]

Probably the best known experiment in using social media to promote the arrest and capture of a war crimes suspect is the Kony 2012 video and accompanying campaign created by the NGO, Invisible Children. The video released on 5 March 2012 focused attention on abuses committed by the LRA in the armed conflict in Uganda. In particular, the video highlighted the crimes committed by LRA leader, Joseph Kony. One of the video's stars was ICC Prosecutor, Luis Moreno-Ocampo. The campaign was created specifically to generate a critical mass demanding international action that would lead to the arrest of Kony and his transfer to the ICC by the end of 2012.[242] The video quickly became viral and, within a few weeks of its release, had more than 100 million views.[243]

Whether international action generated by the public's interest in Kony 2012 will actually lead to Kony's capture remains to be seen. Although there has been massive viewership of the video and thousands of online supporters have posted messages on Facebook, Twitter and other sites relating to the campaign, it is unclear if such public enthusiasm will translate into concrete and direct results. Leading social media critic, Malcolm Gladwell, has remarked that interest in a political or humanitarian cause generated by social media is often superficial.[244] In particular, he notes that a precondition for real social change is whether activists are bound by a 'strong-tie' such as inter-personal relationships.[245] Activism generated by social media campaigns in contrast, he notes, 'are built around weak ties'.[246] As a result, this 'low risk' activism is 'geared toward creating networks, but can be ineffective to achieve concrete goals'. Gladwell starkly concludes

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[238] GC IV (n 28); see also Schmitt (n 191).
[239] See nn 94–98 and accompanying text.
[240] Social media was instrumental in locating Boston mafia figure, Whitey Bolger, in June 2011, a fugitive since 1994. Although this was a domestic criminal case, there is no reason why this same approach could not be used by international tribunals to locate indicted suspects: see Sharon Gaudin, 'FBI used Twitter, Facebook in Hunt for "Whitey" Bulger' (*Computerworld*, 23 June 2011), http://www.computerworld.com/s/article/9217890/FBI_used_Twitter_Facebook_in_hunt_for_Whitey_Bulger.
[241] *Twitter*, 28 June 2011.
[242] Azy Groth, 'The Strategy for Ending LRA Violence' (*Invisible Children*, 5 April 2012), http://blog.invisiblechildren.com/2012/04/05/the-strategy-for-ending-lra-violence.
[243] By 30 March 2012, more than 86 million had watched on YouTube and 16 million on Vimeo.
[244] Gladwell (n 21).
[245] ibid 44.
[246] ibid 45.

by pointing out that social media 'makes it easier for activists to express themselves, and harder for that expression to have any impact'.[247]

Nevertheless, according to Invisible Children, the campaign sparked a new initiative by the United Nations and the African Union to arrest Kony, which would appear to indicate that the campaign has been at least a partial success.[248] The UN acknowledged that the awareness created by the video had been 'useful, very important' in the reinvigorated efforts to capture Kony.[249] Should the UN/African Union initiative produce results and Kony is indeed captured, then perhaps Invisible Children will be able to rightly claim that its social media campaign had direct impact. However, it could also be argued that Invisible Children may have been able to achieve the same result (that is launching the UN/AU initiative) through lobbying by the organisation without the accompanying social media campaign.

6.3 PROSECUTION AND THE USE OF SOCIAL MEDIA IN JUDICIAL AND QUASI-JUDICIAL FRAMEWORKS

IHL specifically calls for the prosecution of violations by competent national courts and/or international tribunals.[250] This duty falls not only on states on whose territory such crimes have occurred or whose nationals are implicated, but also on third-party states who are obligated to assist in prosecutions as well as employ universal jurisdiction to prosecute breaches, if necessary.[251] IHL also requires that in any prosecution for war crimes, due process standards must be upheld.[252] These standards include an independent, impartial and regularly constituted court, the presumption of innocence, being informed of charges, the ability to conduct a defence and examination of witnesses.[253] The many serious concerns regarding the increasing prevalence of social media has significant implications for the prosecution of war crimes and other violations of IHL, and whether these institutions can carry out fair trials.

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[247] ibid 49.

[248] 'Full Pledge', http://www.kony2012.com.

[249] Rodney Muhumuza, 'Kony 2012: African Union Ramps up Hunt for Uganda Rebel Leader in Wake of Viral Video' (*thestar.com*, 23 March 2012), http://www.thestar.com/news/world/article/1150843–kony-2012-african-union-ramps-up-hunt-for-uganda-rebel-leader-in-wake-of-viral-video.

[250] GC I (n 28) arts 49, 50; GC IV (n 28) arts 138–46; Genocide Convention (n 188) art 6 ('Persons charged with genocide or any of the other acts enumerated in Article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction'); General Assembly Basic Principles and Guidelines on the Right to a Remedy, UNGA Res 60/147 (16 December 2005), UN Doc A/RES/60/147, 21 March 2006, Principle III, 4 ('in cases of serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him').

[251] Pictet (n 57) art 146; see also ICRC Study (n 29) rule 161.

[252] See GC I (n 28) art 146 ('In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949').

[253] ICRC Study (n 29) rule 100.

6.3.1 ADMISSIBILITY OF SOCIAL MEDIA EVIDENCE

Social media is a relatively new phenomenon, and international judicial frameworks do not appear, as yet, to have relied on it to a great extent. One of the reasons why courts may be more hesitant to admit social media evidence is the 'unique incongruities between the two cultures'.[254] One study on new media and the courts explains that, while social media is 'decentralized and multidirectional', courts are 'institutional and largely unidirectional'.[255] Social media is 'personal', as opposed to courts which are 'separate', 'cloistered' and 'independent'.[256] Finally, the study notes that, while social media is heavily focused on incorporating video, images, audio and text, courts 'are highly textual'.[257]

Issues relating to anonymity, authenticity and credibility figure prominently when courts are faced with deciding the admissibility of social media evidence.[258] For instance, two central evidentiary foundations, proof of authorship and timeliness

> are not easy to establish in the ever-changing medium of social media. The anonymity offered by some social networking sites may be what makes them attractive to users, but it also makes establishing authorship of content difficult. Similarly, social media sites are constantly changing, as users can add, remove or edit content at any time. As a result, recreating a post or a profile from a particular moment in time can be difficult, if not impossible, depending on how a particular site functions.[259]

As noted by the ICC Prosecutor Moreno-Ocampo, however, '[t]echnology is challenging how the national authorities are behaving … challenging how international institutions are working … [and] [they] have to adapt to this change'. He further acknowledged that the Office of the Prosecutor (OTP) is currently 'collecting videos, pictures, and even satellite pictures' and they are 'working on how to authenticate this material'.[260]

With regards to authentication, the ICJ judgment in the *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Genocide case*) highlights its importance in relation to the evaluation of evidence.[261] This discussion is particularly

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[254] 'New Media and the Courts' (n 15) 7.

[255] ibid.

[256] ibid.

[257] ibid.

[258] Michael Fenner, 'Evidentiary Problems Associated with the Introduction of Web-based evidence', http://www. creighton.edu/fileadmin/user/law-school/news/docs/Admissibility_of_web-based_evidence_2.pdf (noting that '[b]y and large, the novel question regarding the admissibility of web-based evidence … is going to be authentication').

[259] Stephen J Finley Jr, 'Show Me the Evidence: Use of Social Media Information at Trial' (*E-Discovery Law Alerts*, 28 March 2011), http://www.ediscoverylawalert.com/2011/03/articles/litigation-preparedness-strate/ show-me-the-evidence-use-of-social-media-information-at-trial. See also Kendal Kelly Hayden, 'The Proof is in the Posting: How Social Media is Changing the Law' (2010) 73 Texas Bar Journal 188.

[260] Remarks of Luis Moreno-Ocampo, 'The International Response to the Crisis in Libya' (Harvard University Humanitarian Law and Policy Forum webcast, 15 April 2011), http://www.hpcrresearch.org/events/crisis-libya-international-response.

[261] *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)*, Judgment, 26 February 2007 [2007] ICJ Rep 43.

relevant for sources derived from social media. In this case, the parties attempted to have policy statements admitted to the record so that they could rely on the documents' contents. The Court noted, however, that the parties were often unable to determine the significance of such material, because it was difficult to assess whether the accounts presented a speaker's actual knowledge of the facts, opinion or understanding of events after the fact, or whether a statement was simply based on hearsay.[262] For the reasons discussed in the preceding sections of this article, these problems are especially acute with social media evidence because of greater concerns relating to authenticity, context and reliability. Interpretations of 140 character snippets of information on Twitter or short posts on Facebook can be especially difficult.

In addition to the noted uncertainties, there is a heightened concern that social media could compromise due process by eroding the presumption of innocence, breaching confidentiality and harming witness safety, particularly if social media technology is allowed in the courtroom.[263]

6.3.2 US Judicial Precedent

There is already a substantial body of US case law in which social media evidence has figured prominently (although not relating to issues involving IHL). The ways in which social media has been utilised in these contexts can be instructive for international frameworks. Social media evidence is typically used in US courts to impeach witness credibility or to introduce statements against interest.[264] For example, it has played a role in product liability cases – photos uploaded to Facebook have shown plaintiffs engaged in vigorous physical activities after claiming serious injury – and in criminal cases to challenge suspect alibis.[265] In *State v Hall*, for instance, the Texas Court of Appeals upheld the conviction of a woman who had dismembered the body of a victim killed by her boyfriend. In its opinion, the court noted that there was 'considerable evidence' against the defendant, which included a quote posted on her Facebook page that read 'You're part music and part blood, part thinker and part killer, and if you can find that—all of that within you and control it, then you deserve to be set apart'.[266] In *People v Munck*, the defendant was convicted for the murder of his brother partly on the basis of a MySpace message to a friend 'telling her his brother was dead and that he thought he had killed him'.[267] In another case

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[262] ibid para 227.
[263] See, eg, Dennis Sweeney, 'Social Media and Jurors' (Nov/Dec 2010) Maryland Bar Journal 44 (describing due process concerns resulting from the use of social media by jurors during trial).
[264] eg, Minotti (n 134).
[265] ibid fn 52; John M Miller, 'Is MySpace Really My Space? Examining the Discoverability of the Contents of Social Media Accounts' (2011) 30 Trial Advocate Quarterly 28 (personal injury lawsuits); Derek Witte, 'Your Opponent Does Not Need a Friend Request to See Your Page: Social Networking Sites and Electronic Discovery' (2010) 41 McGeorge Law Review 891; Evan E North, 'Facebook Isn't Your Space Anymore: Discovery of Social Networking Websites' (2010) 58 University of Kansas Law Review 1279; Hayden (n 259) (describing a case in which the suspect, based on a photo posted on Facebook, was found to be a member of a gang).
[266] *Hall v State* No 03-10-00665-CR (Texas Court of Appeals, 3d District, 24 August 2011) 15.
[267] *People v Munck* 92 AD3d 63 (NY 3d Dept, 29 December 2011) 66.

from New York, *Loporcaro v City of New York*, which involved claims of negligence, the defendant was granted a request to access the plaintiff's Facebook page to find evidence that contradicted the plaintiff's claim that he had been 'incapacitated and confined to bed'.[268] In so finding, the court noted that 'it appears that plaintiff has voluntarily posted at least some information about himself on Facebook which may contradict the claims made by him in the present action, he cannot claim that these postings are now somehow privileged or immune from discovery'.[269]

6.3.3 INTERNATIONAL COURTS

Unlike the US judicial system, few precedents exist where social media has been central in a case or has been admitted into evidence by an international court. This absence does not appear to be based upon more reluctance by international judicial frameworks to rely upon social media than domestic courts, but rather because of the time delay in adjudicating cases – most international courts and tribunals are currently processing events that occurred before the invention of social media. The lack of jurisprudence could also be attributed to a lack of internet access in countries where major IHL violations have occurred.

European Court of Human Rights

The European Court of Human Rights, to date, does not appear to have directly relied upon social media evidence, although several of the Court's opinions have uncritically cited from Wikipedia.[270] This is problematic, however, because 'wikis are a readily available product of open contributions that are at best loosely monitored for accuracy and appropriateness'.[271] It is difficult, therefore, to 'ensur[e] accurate information' that is 'void of bias and inappropriate interpretations'.[272] A study conducted by Oboler, Steinberg and Stern also found that, as a result of debate framing by editors, 'Wikipedia cannot be a consistently reliable source on politically contentious topics. Less popular, seemingly nonpolitical areas of Wikipedia can be dominated, forcing users to question their reliability'.[273]

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[268] *Loporcaro v City of New York* 2012 NY Slip Op 50617U (35 Misc 3d 1209(A), 9 April, 2012) *7–8.
[269] ibid.
[270] *Lautsi v Italy* App No 30814/06 (ECtHR, 18 March 2011) (Rozakis J and Vajic J concurring) (The opinion classified a work by Appollonaire as 'pornography' based on its characterisation in Wikipedia); *Borotyuk v Ukraine* App No 33579/04 (ECtHR, 16 December 2010) (citing Wikipedia as a source for information on diabetes); *Zdanoka v Latvia*, App No 58278/00 (ECtHR, 16 March 2006) (citing Wikipedia for Latvian demographic information); *Jakobski v Poland* App No 18429/06 (ECtHR, 7 December 2010) (the government of Poland cited from Wikipedia as a definitive source on Buddhist cuisine).
[271] 'New Media and the Courts' (n 15) 61.
[272] ibid.
[273] Andre Oboler, Gerald M Steinberg and Raphael Stern, 'The Framing of Political NGOs in Wikipedia through Criticism Elimination' (2010) 7(4) Journal of Information Technology and Politics.

International Criminal Court

There is little jurisprudence reflecting reliance by the ICC Trial Chamber on sources derived from social media. This body of law will further develop as more cases are adjudicated by the Court. However, the OTP does consult social media as part of its reliance on open source information relevant to its investigative activities at all stages of inquiry.[274] For example, in *Prosecutor v Thomas Lubanga Dyilo*,[275]

> the Prosecution presented video footage of children in UPC/FPLC training camps and military convoys who clearly appeared to be under the age of 15 as part of its evidence on the conscription and enlistment of children under the age of 15 and their use to participate actively in hostilities.

In the Court's conviction of Lubanga, while the case did not turn alone on the video footage presented by the OTP, this evidence did play a significant role. The Court credited this evidence as 'compelling' and found it to be 'admissible and reliable' to the extent that it depicted 'children who are clearly under the age of 15'.[276]

Social media evidence was also utilised by the OTP reportedly in the *Situation in Kenya* as well as the *Situation in Libya*.[277] For instance, in correspondence with the authors, an OTP representative reported that[278]

> in some situations (such as Libya) we have received a considerable amount of material from social media. Because of the difficulty of sourcing or authenticating social media information, it will often be used for the purpose of leads or to provide contextual information regarding a particular conflict.

Indeed, in the Prosecutor's application to the Pre-Trial Chamber for indictments against Muammar and Saif al-Islam Gadaffi, and Abdullah al-Senussi, several social media sources were annexed, including videos posted on YouTube and tweets of the events reported by media outlets.[279]

In reviewing social media evidence, the OTP has 'developed internal guidelines and best practices regarding the manner in which it collects and evaluates information', and '[w]hen evaluating and analysing these sources and information, the Office is careful to mitigate all forms of bias and to look at incriminating and exonerating information equally'.[280]

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[274] Email correspondence with Rod Rastan, OTP Legal Adviser, 4 August 2011.

[275] ibid.

[276] ICC, *Prosecutor v Lubanga*, Judgment pursuant to Article 74 of the Statute, ICC-01/04-01/06, Trial Chamber I, 14 March 2012, at paras 644, 1244, 1278; See also paras 257, 268, 481,716, 792, 854, 915, 1348.

[277] See, eg, ICC, *Situation in the Libyan Arab Jamahiriya*, Application concerning Public Statements made by the Prosecutor and Respect for the Presumption of Innocence Principle, Pre-Trial Chamber I, 25 May 2011.

[278] Email correspondence from Antônia Pereira de Sousa, OTP Associate Cooperation Officer, 10 October 2011.

[279] ICC, *Situation in the Libyan Arab Jamahiriya*, Prosecutor's Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar Gaddafi and Others, ICC-01/11, Pre-Trial Chamber I, 16 May 2011 (Annex 7 lists several videos posted on YouTube; Annex 9.10, 9.11, 9.24, screen captures of live blogs and Twitter updates).

[280] Correspondence from Antônia Pereira de Sousa (n 278).

In addition to direct admission, social media evidence may also enter the record via NGO publications. It is unclear, however, the extent to which sources referenced in these documents are verified. Unfortunately, a worrying trend has been observed, perhaps because of a lack of resources or access to conflict zones, where many international frameworks appear to rely significantly on unverified and/or unsourced materials that were produced by organisations following few, if any, methodological standards.[281] Standards that may be used often fall significantly short of those employed by the courts themselves.[282] This 'methodology' gap appears to be even more pronounced in quasi-judicial frameworks, such as UN fact-finding missions.[283] This problem will only intensify as international judicial frameworks increasingly look to social media. An over-reliance on social media that will ultimately be deemed inadmissible, however, may actually end up hampering an otherwise successful criminal prosecution. Therefore, it is in the interest of prosecutors and fact-finding bodies to enact guidelines.

Although the OTP may rely heavily on open source material such as NGO reports, and more and more on social media evidence, it does appear that the ICC Trial Chamber has been fairly rigorous in enforcing strict standards of admissibility for this type of evidence. In a decision made in the *Katanga/Chui* case, for example, the Trial Chamber explained that each item of evidence must be 'individually assessed for its relevance and probative value at the time it is tendered and before being admitted into evidence'.[284] In determining 'probative value', the Court first looks at reliability.[285] With regard to NGO reports,[286] the Court found that[287]

> Similarly, reports emanating from independent private organizations … can be considered prima facie reliable if they provide sufficient guarantees of non-partisanship and impartiality … includ[ing] sufficient information on their sources and the methodology used to compile and analyze the evidence upon which the factual assertions are based. If such particulars are not available, either from the reports themselves or from their author(s), the Chamber cannot assess the reliability of the content of the reports; it is therefore unable to qualify those documents as sufficiently reliable to be admitted into evidence. Moreover, where such reports are based, for the most part, on hearsay information, especially if that information is twice or further removed from its source, the reliability of their content is seriously impugned.

As this opinion makes clear, judicial bodies must be cautious when relying on social media, must independently verify material, and be aware that admission of social media evidence is likely to be most successful in the IHL context when it is used as a statement against the interest of a

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[281] See, eg, Prosecutor's Application (n 279) Annexes 8–9 (attaching several NGO reports); ICC, *Situation in the Republic of Côte d'Ivoire*, Request for Authorisation of an Investigation pursuant to Article 15, ICC-02/11, Pre-Trial Chamber III, 23 June 2011, Annex 4 (attaching NGO reports).
[282] As noted by the Court in *Mbarushimana* (n 139), HRW reports were considered by the court to be of low probative value because of their reliance on hearsay.
[283] Steinberg, Herzberg and Berman (n 51).
[284] Decision (n 139) para 13.
[285] See ibid para 21.
[286] These same arguments could apply equally to social media evidence.
[287] Decision (n 139).

litigating party or used to impeach witness credibility.[288] Social media can also serve a useful role in the enforcement context when it originates from an uninterested party and is simply capturing a 'real-time' impression, such as the tweets (highlighted at the opening of this paper) by the computer technician in Pakistan who just happened to be an accidental witness to the US military operation against bin Laden.[289]

7. Conclusion

Social media commentator, Andy Carvin, has remarked[290] that

> [w]ar is hell – there's no way around that. And the growth of alternative media, social media, and citizen journalism and the like now gives the public many ways to access content that would otherwise have been lost in archives.

As the examples in this article reflect, there is tremendous opportunity for the use of social media to educate the public about the rules of IHL, to monitor compliance with the law and to report on suspected violations of IHL. This new communication medium can be used to generate public interest and bolster advocacy campaigns. In many cases, social media sites can be used to protect the civilian population by providing a direct link between those experiencing the events on the ground and humanitarian and military assistance. Social media can make international institutions and courts more approachable and increasingly a part of daily life.

Alternatively, social media can be exploited by repressive regimes and armed groups to commit violations of IHL. In some cases, use of social media technologies could endanger the civilian population through intimidation, or by enhancing the ability, of armed groups to target civilians. Issues relating to reliability and authenticity can complicate verification of information which could impact on the implementation of humanitarian protection.

It is also unclear the extent to which social media will aid IHL enforcement mechanisms such as fact-finding, arrest and prosecution. The many complexities inherent in the laws may not be well-suited to the fast-paced, short bursts of information that are commonplace on social media platforms. Reliability and filtering concerns may frustrate efforts to carry out these obligations. Social media usage also has the potential to devolve into a 'battle of the narratives' where it is difficult to separate out accurate information from advocacy or propaganda.

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[288] See, eg, ICJ, *Genocide case* (n 261): evidentiary value 'depends, among other things, on (1) the source of the item of evidence (for instance, partisan or neutral), (2) the process by which it has been generated (for instance, an anonymous press report or the product of a careful court or court-like process), and (3) the quality or character of the item (such as statements against interest, and agreed or uncontested facts)'.

[289] But see Jeffrey Bellin, 'Facebook, Twitter, and the Uncertain Future of Present Sense Impressions' (2012) 160 University of Pennsylvania Law Review 331.

[290] Edward Schumacher-Matos, 'War is Hell: Andy Carvin and the Tweeting of a Graphic Syrian Video' (*NPR Ombudsman*, 6 February 2012), http://www.npr.org/blogs/ombudsman/2012/02/06/146490308/war-is-hell-andy-carvin-and-the-tweeting-of-a-graphic-syrian-video.

Based on these challenges, it is essential that official IHL enforcement frameworks – such as UN fact-finding bodies, investigations conducted by the High Contracting Parties to the Conventions and judicial bodies – begin to implement guidelines relating to social media. The prevalence of social media evidence in armed conflict will continue to increase, be it impressions from the ground, photographic or video imagery. Good practices could include evaluating each piece of social media evidence on its own rather than crediting all information provided by a specific source (such as an NGO) based simply on generalised claims of reliability regarding that source. Official fact-finding bodies and courts should base legal conclusions on a review of all relevant evidence rather than repeating conclusions drawn by those without the requisite legal or military expertise, or who may have based their analysis on a few disparate pieces of data derived from social media applications.

Establishing structures now can allow those charged with carrying out the legal obligations of IHL monitoring and enforcement to harness the potential of social media, while minimising the concerns. At the same time, such guidelines would improve future monitoring and fact-finding processes as well as increase civilian protection. Clear standards can prevent future evidentiary complications and due process violations, which could jeopardise judicial prosecutions or other-wise hamper the enforcement of IHL.