

Social Media and Change in International Humanitarian Law Dynamics

*Rosine Faucher**

Abstract

On August 15, 2017, the International Criminal Court (ICC) issued an arrest warrant against Mahmoud Mustafa Busayf Al-Werfalli. The pre-trial Chamber founded most of its decision on social media-based evidence published by the Al-Saiqa Brigade's Media Centre. An unprecedented move. But what about new crisis maps that are put together during strife? Or the Kony2012 campaign? To be sure, social media already punctually influences the dynamics of IHL, requiring this phenomenon to be analyzed in greater depth. Do some particularities of the information available through social media have the potential to change the current state of IHL's monitoring, enforcement and prevention dynamics? This essay aims to analyze how the nature of information, and who can create and access it, can impact IHL. This piece is meant to start a dialogue on a topical issue and initiate a reflection on its ramifications rather than present a definitive analysis. Accordingly, this essay sheds light on how social media and IHL are intertwined and explores how social media has the potential to change IHL in profound ways. It is argued that the type of information accessible through social media has the potential to enhance the conflict prevention and monitoring capacities of different IHL actors, while also facilitating IHL enforcement. Finally, this piece provides recommendations to address the different challenges social media platforms present within the IHL context, including further research in specific areas.

French translation

Le 15 Août 2017, la Cour Pénale Internationale (CPI) émit un mandat d'arrestation contre Mahmoud Mustafa Busayf Al-Werfalli. Dans un geste sans précédent, la chambre préliminaire a fondé sa décision en partie sur des preuves provenant de médias sociaux publiées par le centre médiatique de la Brigade d'Al-Saiqa. Toutefois, qu'en est-il des nouvelles cartographies de crise créées pendant les conflits? De la campagne Kony2012? La manière dont les réseaux sociaux ont gagné une influence ponctuelle dans les dynamiques du droit humanitaire internationale (DHI) requière une analyse en profondeur de ce phénomène. Les particularités de l'information rendue accessible par les réseaux sociaux ont-elles le potentiel de changer l'état actuel du DHI en termes de surveillance, de mise en œuvre et de prévention? Cet essai tente d'analyser comment la nature de l'information, ainsi que qui la crée et y a accès, peut influencer le DHI. Au lieu de présenter une analyse définitive, le but de cet essai est d'entamer le dialogue sur cette question d'actualité et d'initier une réflexion quant à ses implications. Par conséquent, il est mis en lumière les entrecroisements entre le DHI et les réseaux sociaux, et exploré comment ces derniers ont le potentiel de changer le DHI de façon considérable. Cet article soutient que le type d'information accessible à travers les réseaux sociaux a le potentiel d'améliorer la prévention des conflits et les capacités d'observation des différents acteurs du DHI, tout en facilitant la mise en vigueur de ce dernier. Enfin, cet essai suggère des recommandations pour répondre aux défis posés par les réseaux sociaux dans le contexte du DHI, y compris en matière de poursuite de recherches futures sur des aspects spécifiques.

Spanish translation

El día 15 de agosto de 2017, la Corte Penal Internacional emitió una orden de detención contra Mahmoud Mustafa Busayf Al-Werfalli. La Sala de Cuestiones Preliminares se basó principalmente en una prueba obtenida mediante redes sociales. Esta fue publicada por el Centro de información mediática de la Brigada Al Saiqa. Sin duda se trata de una medida sin precedentes. ¿Pero qué se puede decir acerca de los mapas de crisis agrupados durante conflictos? ¿O sobre la campaña Kony2012? Lo cierto es que los medios y redes sociales ya tienen influencia sobre del Derecho internacional humanitario, lo que implica que este fenómeno sea analizado con mayor profundidad. O es que acaso ¿existen ciertas particularidades de la información disponible en redes sociales que tiene el potencial de alterar el estado actual de la supervisión, aplicación y prevención del Derecho internacional humanitario? Este ensayo tiene como objetivo analizar la naturaleza de la información con la que se cuenta, quién la puede crear y quién puede acceder a la misma, así como el impacto que esto tiene en el Derecho internacional humanitario. Asimismo, pretende constituir el inicio de un diálogo sobre temas de actualidad y dar lugar a reflexiones sobre sus ramificaciones en lugar de presentar un análisis definitivo. Por consiguiente, este ensayo arroja luz sobre cómo los medios sociales y el Derecho internacional humanitario interactúan, y explora si los medios sociales tienen o no el potencial de cambiar el Derecho internacional humanitario de manera profunda. En ese sentido, se sostiene que el tipo de información disponible en medios sociales tiene el potencial de mejorar la prevención de conflictos y la capacidad de supervisión por varios actores del Derecho internacional humanitario, a la vez que facilita su aplicación. Por último, este ensayo propone recomendaciones para hacer frente a los desafíos que presentan las plataformas de medios sociales en contextos de conflicto armado, incluyendo mayores investigaciones en campos específicos.

Introduction

I. IHL & Social Media

A. Social Media According to the Literature

B. Challenges

C. What about Traditional Media?

D. The Importance of Information for IHL

E. Conclusion

II. IHL Compliance & Social Media

A. Monitoring

1. Legal Framework

2. Social Media's Added Value to NGOs' Undertaking

3. Consequences of Social Media Use by NGOs in IHL Monitoring and Reporting Dynamics

B. Prevention

1. Legal Framework

2. Social Media's Added Value in the Prevention Context

3. Elevated Relevance of Prevention

C. Enforcement

1. IHL's Current Enforcement Framework and its Limits

2. Changing Evidentiary Dynamics

3. Social Media Related Evidentiary Hurdles

4. Solutions to Social Media Related Evidentiary Hurdles

D. Further Structural Change

1. Closing Remarks on Monitoring, Prevention and Enforcement

2. Further Procedural Shift to Address IHL's Paradox

III. Recommendations

Conclusion

A. Limits

B. Concluding Remarks

Introduction

Social media is a burgeoning phenomenon. Facebook, Twitter and YouTube are the main user-generated platforms that come to mind, but many others are being created every day. Social media is ubiquitous! It is part of most people's lives and has profoundly altered many different practices, like business. International Humanitarian Law (IHL) dynamics do not seem isolated from this phenomenon. Indeed, social media is used more and more by IHL actors across the board. For example, armed groups like the Islamic State of Iraq and Syria (ISIS) continue to recruit Canadians on social media in 2017.¹ It is alleged that 46,000 Twitter accounts are used to support ISIS.² And although social media platforms do have anti-terror policies and preventive mechanisms, terror-related content can still be found today on Twitter, Facebook, and the like. Some might also remember the criticized *Kony 2012* social media campaign by the Non-Governmental Organisation (NGO) Invisible Children, which demanded the arrest of Joseph Kony, leader of the Lord's Resistance Army, for having committed war crimes.³

On August 15, 2017, the International Criminal Court (ICC) issued an arrest warrant against Mahmoud Mustafa Busayf Al-Werfalli. Al-Werfalli is a Libyan Major in the Al-Saiqa Brigade,⁴ an elite force which was controlled by the Libyan Ministry of Defense after Qaddafi's fall.⁵ The arrest warrant was issued because the ICC considered there was reasonable ground to believe that Al-Werfalli was criminally responsible for charges of murder as war crimes in the context of the ongoing armed conflict on Libyan territory under article 8(2)(c)(i) and 25(3)(a) and (b) of the Rome Statute.⁶ Much of the information that the pre-trial Chamber of the ICC relied on when issuing an arrest warrant for Al-Werfalli was social media content published by the Al-Saiqa Brigade's Media Centre.⁷

In one video posted on Facebook on June 3, 2016, Mr. Al-Werfalli shoots a hooded person several times until the person falls on the ground, dead.⁸ That is only one of the events on which the ICC relied to issue the warrant, as six other videos were analyzed and used, all of which were posted on social media by the Brigade.⁹

This example shows how social media already punctually affects the dynamics of IHL, which is why this phenomenon should be analyzed more systematically and in greater depth. Do some particularities of the information available through social media have the

* Rosine Faucher is a research associate with the Law, Governance & Society Lab, where she works on human rights and climate governance related projects.

¹ Nicole Bogart, "ISIS is still trying to recruit Canadians on social media, CSIS warns", *Global News* (2 March 2017), online: <<https://globalnews.ca/news/3280939/isis-recruiting-canadians-online-csis-warns/>>.

² *Ibid.*

³ Kate Dailey, "Kony2012: The rise of online campaigning", *BBC News Magazine* (12 March 2012), online: <<https://www.bbc.com/news/magazine-17306118>>.

⁴ International Criminal Court, "Case Information Sheet, Situation in Libya: The Prosecutor v. Mahmoud Mustafa Busayf Al-Werfalli ICC-01/11-01/17" (July 2018), online: <<https://www.icc-cpi.int/libya/al-werfalli/Documents/al-werfalliEng.pdf>> [ICC Info Al-Werfalli].

⁵ Francesco Finucci, "Libya: military actors and militias" (2013), *Global Security*, online: <https://www.globalsecurity.org/military/library/report/2013/libyan-militias_finucci.pdf>.

⁶ ICC Info Al-Werfalli, *supra* note 4.

⁷ *The Prosecutor v. Mahmoud Mustafa Busayf Al-Werfalli*, ICC-01/11-01/17, Warrant of Arrest (15 August 2017) at para 3 (International Criminal Court), online: <www.icc-cpi.int/CourtRecords/CR2017_05031.PDF>.

⁸ *Ibid* at para 11.

⁹ *Ibid* at paras 11–22.

potential to change the current state of IHL's monitoring, enforcement and prevention dynamics? Through this essay, I will analyze how the nature of the information, and who can create and access it, can impact the application of IHL and its focus. The nature of this piece is theoretical. Social media being a recent phenomenon, this paper has a descriptive undertone and requires some speculation. For these reasons, the scope is deliberately restricted to analyzing the potential salutary effects of social media on IHL dynamics. The following issues are not addressed here but deserve further research: the nature of social media in the context of means and methods of warfare and the uses and pitfalls of social media in contemporary conflicts.

This piece is meant to start a dialogue on a topical issue and initiate a reflection on its ramifications rather than present a definitive analysis. Accordingly, I argue that the type of information accessible through social media has the potential to enhance the conflict prevention and monitoring capacities of different IHL actors, while also facilitating IHL enforcement. This, in turn, can have a salutary effect on IHL compliance overall, while also increasing justice and bringing IHL closer to its beneficiaries.¹⁰

This paper is divided in the following form. Section II examines the literature on social media, while also analyzing how social media and IHL are intertwined. Section III explores how social media has the potential to change IHL compliance dynamics by altering monitoring, prevention and enforcement of IHL obligations and their violation. Finally, section IV looks into general recommendations that could help address the different challenges social media platforms present within the IHL context, and section V concludes on the topics discussed.

I. IHL & Social Media

In this section, I attempt to explore the general benefits and challenges of social media as a new platform for gathering information and as being different in nature from traditional media. I also explain the importance of information in the context of IHL.

A. *Social Media According to the Literature*

Social media is a recent phenomenon. Nevertheless, such information platforms have become ubiquitous. Information sources are generally evaluated by the content they render accessible (what) as well as who can access it (who).¹¹ First, social media is unique in terms of who can access and provide information through its channels. Indeed, social media tends to be categorized as a non-conventional tool enabling to reach a large amount of people¹² and disseminating user-generated content.¹³ While traditional media is often seen as

¹⁰ Note that while IHL has different beneficiaries, i.e. combatant, civilians, armed forces, etc., this paper focuses on the repercussions that changes within IHL have on individuals, more so than on armed forces.

¹¹ Search for Common Ground, "Communication for Peacebuilding: Practices, Trends and Challenges" (2014) at 10-11, online: <<https://www.sfcg.org/wp-content/uploads/2014/02/communication-for-peacebuilding-practices-trends-challenges.pdf>> [Search for Common Ground].

¹² Sarah Költzow, "Monitoring and Evaluation of Peacebuilding: The Role of New Media" *Geneva Peace Building Platform* (September 2013) at 10, online: <<http://www.gppplatform.ch/sites/default/files/PP%2009%20-%20Monitoring%20and%20Evaluation%20of%20Peacebuilding%20The%20Role%20of%20New%20Media%20-%20Sep%202013.pdf>> [Költzow].

¹³ Stacey B Steinberg, "#Advocacy: Social Media Activism's Power to Transform Law" (2016) 105:3 *Kentucky LJ* 413 at 432.

more linear and top-down,¹⁴ social media is presented as a bottom-up tool allowing democratization of information access.¹⁵ This is probably why some qualify social media as the “people’s broadcaster.”¹⁶ More generally, some argue that social media provides a “ground truth” not otherwise available.¹⁷ This favours community engagement, allowing certain groups, to express themselves and access information.¹⁸

Second, the information provided through social media is generated and published in real time. It is thus more rapidly accessible.¹⁹ Geo-referencing, and direct-reporting are also options that social media offers.²⁰ These characteristics are said to increase the accuracy of information available on social media.²¹ Additionally, social media is an open source technology. Hence, everything is accessible for free.²² This particular aspect has been recognized to enable information to reach a “larger number of beneficiaries more frequently than through conventional means.”²³

B. Challenges

As presented above, social media seems to be a tool which can solve many information access problems. Yet social media also comes with dangers and challenges, which are very important to acknowledge in order to favour an adequate use of this tool in the context of IHL. To simplify what has been extensively discussed by the literature, I address these challenges using three categories. First, social media faces technical challenges. Indeed, the issue of unprecedented volume, or what some qualify as an “overflow” of information, makes it harder to select adequate information.²⁴ Additionally, videos, images, and other textual supports sometimes face quality issues, which transpose into reliability concerns.²⁵

¹⁴ Roger Bronson Rozario, “New Media and the Traditional Media Platforms: Introspection on the Differences in Technical and Ideological Factors and Audience-integration Patterns between New Media and Traditional Media” (2013) 12:3 *Artha J Soc Sci* 43 at 52; Andrea Ceron, “Internet, News, and Political Trust: The Difference Between Social Media and Online Media Outlets” (2015) 20 *J Computer-Mediated Com* 487 at 489, 492 [Rozario].

¹⁵ Search for Common Ground, *supra* note 11 at 6.

¹⁶ Sarah Joseph, “Social Media and Promotion of International Law” (2015) 109:1 *Am Soc’y Intl L* 249 at 253.

¹⁷ Anand Varghese, “Social Media Reporting and the Syrian Civil War” (7 June 2013) United States Institute for Peace at 2, online: <www.usip.org/sites/default/files/PB-151.pdf>.

¹⁸ Timo Lüge, International Federation of the Red Cross and Red Crescent Societies, *How to Use Social Media to Better Engage People affected by Crises: a brief guide for those using social media in humanitarian organisations* (September 2017) at 1, online: <www.icrc.org/fr/download/file/57272/icrc-ifrc-ocha-social-media-guide.pdf>.

¹⁹ Anne Herzberg & Gerald M Steinberg, “IHL 2.0: Is There a Role for Social Media in Monitoring and Enforcement?” (2012) 45:3 *Isr L Rev* 45:3 at 505 [Herzberg & Steinberg]; see Költzow, *supra* note 12 at 9–10.

²⁰ Költzow, *supra* note 12 at 10.

²¹ *Ibid.*

²² Jason Cone, “The Promise of Social Media for Humanitarian Action?” *Program on Humanitarian Policy and Conflict Research* (10 May 2012), online: <<https://reliefweb.int/report/world/promise-social-media-humanitarian-action>>.

²³ Költzow, *supra* note 12 at 10.

²⁴ *Ibid* at 12.

²⁵ *Ibid.*

Second, practitioners as well as academics highlight the bias emanating from information on social media.²⁶ Here, “bias” does not refer to the phenomenon of fake news but rather to the lenses through which one perceives events and which, potentially unconsciously, influences one’s depiction of such events. Indeed, the lack of context, characteristic of information sourced on social media,²⁷ and caused by Twitter’s character limit for example, does not necessarily allow the reader or viewer to understand which narratives are vehiculated through the content. Yet, everyone has access to social media platforms. It has been recognized that social media can thus misinform²⁸ as reports can easily be fabricated and/or falsified.²⁹ More strikingly, social media has been used by dissident groups³⁰ to intimidate, recruit (as in the case of ISIS), incite terror and promote narratives of hate.³¹ The viral nature of social media platforms creates the potential for misinformation to be broadcast widely, which is concerning since many still equate the wide distribution of information with authenticity.

Third, social media poses ethical, privacy, and security problems. In the context of IHL, confidentiality issues are particularly at stake because of how they affect security. For example, a video or image aimed to be published in a small circle can become viral in seconds and go through a “crisis of visibility,” thus exposing the identity of victims and third parties.³² From a judicial process standpoint, this has been viewed as potentially problematic as it can jeopardize witness safety.³³ Moreover, the publication process on social media platforms can allow the information provider to remain anonymous, which becomes an evidentiary burden in a judicial context.³⁴ Throughout this paper, I will attempt to address the many concerns outlined above and suggest solutions (see in particular section III.3).

C. *What about Traditional Media?*

Despite the challenges of social media outlined above, it is important to evaluate its use within the context of IHL in light of its counterpart, traditional media. Although this type of information may be more one-sided, traditional media sources usually employ a

²⁶ To further read about such biases and where they come from, see for example, Cass R Sunstein, *#Republic: Divided Democracy in the Age of Social Media* (Princeton: Princeton University Press, 2017).

²⁷ Ellie Mae O’Hagan, “Does social media really bring us closer to the reality of conflict?” *The Guardian* (10 March 2014), online: <<https://www.theguardian.com/commentisfree/2014/mar/10/social-media-bring-us-closer-reality-conflict-exploited>>; Herzberg & Steinberg, *supra* note 19 at 513.

²⁸ O’Hagan, *supra* note 27; Herzberg & Steinberg, *supra* note 19 at 511.

²⁹ Herzberg & Steinberg, *supra* note 19 at 515; Malachy Browne, Liam Stack & Mohammed Ziyadah, “Streets to Screens: conflict, social media and the news” (2015) 18:11 *Info Com & Soc’y* 1339 at 1343 [Browne et al].

³⁰ David Heitner, “Civilian Social Media Activists in the Arab Spring and Beyond: can they ever lose their civilian protections?” (2014) 39:3 *Brooklyn J Intl Law* 1207 at 1208.

³¹ Herzberg & Steinberg, *supra* note 19 at 519.

³² Sam Gregory, “Ubiquitous Witnesses: who creates the evidence and the live(d) experience of human rights violations?” (2015) 18:11 *Info Com & Soc’y* 1378 at 1382.

³³ Herzberg & Steinberg, *supra* note 19 at 531.

³⁴ *Ibid* at 514, 530.

quality-control system.³⁵ This means that verification and validation processes should have been performed before the publication of information. On the other hand, the source of information available on social media is, by nature, harder to trace.³⁶ Thus, the original source as well as its quality are more easily identified when information comes from traditional media.

However, the reality is that social media becomes the only option when traditional media has been unable, or reluctant, to cover conflict zones.³⁷ Indeed, traditional media has refused to cover certain events with their own personnel because of the potential risk of exposure for journalists and eyewitnesses.³⁸ For example, “Syria has been the most dangerous war for journalists and for citizen journalists and activists.”³⁹ This leaves social media as one of the only tools to cover the conflict without facing these on-the-ground dangers.⁴⁰ Thus, it seems that social media has started to fill the informational vacuum created when traditional media cannot access a conflict zone for security or interest reasons.

Moreover, some NGOs have used social media to fill this informational vacuum. For example, the *Voices Feeds* tried to move to conflict zones within Libya in order to ensure that information about people and conditions continued to be accessible.⁴¹ Such initiative circumvented the absence of traditional media on the ground where there were internet blackouts, while providing ground level information to NATO.⁴² As presented above (see section II.a), social media is an open source of information all can use. This allows more IHL beneficiaries to instantaneously access “ground truth” which would otherwise not be broadcast as quickly, if at all. Moreover, social media may present the potential for increasing the individual’s role within IHL dynamics.⁴³

D. The Importance of Information for IHL

It is in light of the potential uses highlighted above, and the new role social media has played filling current traditional media gaps on the ground, that one can see the potential for such a tool in the IHL context. However, it is important to note that this tool’s value is simply derived from the information that it renders accessible (what) as well as whom it

³⁵ *Ibid* at 511.

³⁶ Klas Backholm et al, “Crises, Rumours and Reposts: Journalists’ Social Media Content Gathering and Verification Practices in Breaking News Situations” (2017) 5:2 *Media & Com* 67 at 68.

³⁷ Gregory, *supra* note 32 at 1380.

³⁸ See Browne et al, *supra* note 29 at 1341.

³⁹ *Ibid* at 1342.

⁴⁰ *Ibid* at 1344.

⁴¹ Steve Stottlemire & Sonia Stottlemire, “Crisis Mapping Intelligence Information During the Libyan Civil War: An Exploratory Case Study” (2012) 4:3–4 *Pol’y & Internet* 24 at 31 [Stottlemire].

⁴² *Ibid* at 27–28.

⁴³ Some have argued for increasing the individuals’ role within the IHL system and the need for IHL to re-center itself around its beneficiaries. See for example, Paolo Benvenuti & Giulio Bartolini, “Is there a need for new international humanitarian law implementation mechanisms?” chapter 29 in Robert Kolb & Gloria Gaggioli, eds, *Research Handbook on Human Rights and Humanitarian Law* (Cheltenham: Elgar, 2013) 590 at 611.

renders it accessible to (who). More importantly, information is a building block of IHL's implementation and of State compliance with IHL.

IHL aims to limit the effects of armed conflict for humanitarian reasons. It “aims to protect persons who are not or are no longer taking part in hostilities,” i.e. the sick, the wounded, prisoners and civilians, and it defines the rights and obligations of the parties to a conflict, be they State or non-State affiliated armed forces, in the conduct of hostilities.⁴⁴ Hence, one of IHL's purposes is to protect its beneficiaries⁴⁵ and information has an enormous role to play to ensure that protected persons remain so throughout conflicts.

First, information is crucial for military purposes. Indeed, the amount and quality of information is essential for commanders during the orchestration of war. Situational awareness, i.e. the depth of understanding of a situation, is necessary for military personnel to make proper decisions; ones respecting the IHL principles of proportionality, necessity and distinction.⁴⁶ An accurate understanding of the situation also greatly influences tactical success.⁴⁷ Thus, more, better and quicker information is essential for parties of armed hostilities to respect their IHL obligations. The Libya Crisis Map is a good example of how social media has been beneficial in enhancing information in a way conducive to respecting IHL. Indeed, maps constructed from on-the-ground Tweets and other social media information were used to inform some of NATO's missions, like the no-fly zone (see section III.2b for more details).

Second, information is also necessary for IHL actors to monitor and enforce respect of IHL obligations (see section III.1 & III.3). Indeed, social media derived information can be an enforcement and witness tool.⁴⁸ For example, as discussed in section I, social media content published by the Al-Saiqa Brigade's Media Centre constituted an essential element of the ICC Pre-Trial Chamber's decision to issue an arrest warrant against elite force Major Al-Werfalli. Additionally, considerations of public interests have even convinced some that divulging information is crucial for enforcement purposes. To some, this justifies ignoring certain confidentiality privileges in order to reach a just result for the international community and the victims of the offence.⁴⁹

E. Conclusion

⁴⁴ Russy D Sumariwalla, “Making a Difference: The Role of International NGOs in the Evolution of International Human Rights and Humanitarian Law (HRHL)” (2011) 19:1 Willamette J of Intl L & Dispute Res 287 at 297.

⁴⁵ Jann K Kleffner, “Improving Compliance with International Humanitarian Law Through the Establishment of an Individual Complaints Procedure” (2002) 15:1 Leiden J of Intl L 237 at 238.

⁴⁶ See Geoffrey Corn & James A Schoettler Jr, “Targeting and Civilian Risk Mitigation: The Essential Role of Precautionary Measures” (2015) 22:3:4 Mil L Rev 785 at 801 [Corn & Schoettler]; Browne et al, *supra* note 29 at 1341.

⁴⁷ See Corn & Schoettler, *supra* note 46 at 806.

⁴⁸ Rozario, *supra* note 14 at 250.

⁴⁹ *Prosecutor v Blagoje Simić, Milan Simić, Miroslav Tadić, Stevan Todorović and Simo Zarić*, IT-95-9, Separate Opinion of Judge David Hunt on Motion by Todorović for Order Requesting Assistance of the International Committee of the Red Cross (7 June 2000) (International Criminal Tribunal for the Former Yugoslavia); see also Emily Ann Berman, “In Pursuit of Accountability: The Red Cross, War Correspondents, and Evidentiary Privileges in International Criminal Tribunals” (2005) 80:1 NYUL Rev 241.

Through this section, I attempted to demonstrate the importance information holds for IHL purposes and how the type of information accessible through social media has, despite such platforms' challenges, proven useful in the context of conflicts. Indeed, existing studies show that digital communication channels can be "critical before, during and after natural disasters, crises and armed conflicts, to save lives and reduce suffering."⁵⁰ It is with this perspective of social media that I will now evaluate its potential for altering various IHL dynamics.

II. IHL Compliance & Social Media

There is a clear consensus across the literature that compliance is one of IHL's most important challenges.⁵¹ It is difficult for States to "abide by their legal obligations,"⁵² thereby leaving existing IHL enforcement mechanisms greatly unused.⁵³ This is so partly because of the lack of States' will to abide by, and enforce upon their counterparts, IHL obligations.⁵⁴ Indeed, the history of IHL shows that States have always refused to put in place "any form of binding supervision of their conduct in armed conflicts."⁵⁵ Conflicts are usually intrinsically tied to sovereignty issues, and States argue that most enforcement mechanisms hinder their sovereignty in some way or another. Although conceptually understandable, this reluctance has fed one of IHL's main paradoxes: that IHL is a state-centric system, which depends on the willingness of States to work,⁵⁶ while it is meant to protect beneficiary individuals like civilians and conflict victims who have no say in the functioning of the framework.

Considering the lack of State compliance with IHL, NGOs have increasingly accepted to be key players in keeping States accountable in order to provide protection to IHL's beneficiaries. Indeed, the International Committee of the Red Cross (ICRC) is qualified by many as "the guardian of IHL," as it actively participates to monitoring compliance, developing the legal framework, and disseminating the norms of IHL.⁵⁷ Although States and armed forces remain the guarantors of IHL because the respect of the law depends on their behaviour,⁵⁸ the literature demonstrates large acceptance of the increasing responsibility of NGOs in IHL monitoring and enforcement efforts.⁵⁹

⁵⁰ Lüge, *supra* note 18 at ii.

⁵¹ Corn & Schoettler, *supra* note 46 at 237.

⁵² "International Humanitarian Law and the Challenges of Contemporary Armed Conflicts" (28th International Conference of the Red Cross and Red Crescent delivered in Geneva, 2–6 December 2003), 03/IC/09 at 20 [ICRC 28th International Conference].

⁵³ *Ibid* at 22.

⁵⁴ *Ibid* at 22, 25; see also Sean Aday, "Social Media, Diplomacy, and the Responsibility to Protect" (17 October 2012), *Take Five*, online: <<https://takefiveblog.org/2012/10/17/social-media-diplomacy-and-the-responsibility-to-protect/>>.

⁵⁵ Toni Pfanner, "Various Mechanisms and Approaches for Implementing International Humanitarian Law and Protecting and Assisting War Victims" (2009) 91:874 *Intl Rev Red Cross* 279 at 307.

⁵⁶ Sumariwalla, *supra* note 44 at 617.

⁵⁷ Pfanner, *supra* note 55 at 291; Kleffner *supra* note 45 at 298.

⁵⁸ Pfanner, *supra* note 55 at 291.

⁵⁹ Sumariwalla, *supra* note 44 at 600.

This participation of civil society has been salutary for IHL as NGOs have proven adept at documenting IHL violations.⁶⁰ NGOs can also provide a point of pressure on governments to incite change.⁶¹ It is thus increasingly recognized that NGOs often fill gaps left by States and by international organizations that are torn between different political views in the context of conflicts.⁶² In light of the above, it would be a mistake to think that the lack of political will inhibit the application of IHL. Rather, NGOs' increasing use of social media, which supports their own rising role, has the potential, I argue, to positively change the IHL compliance dynamics of monitoring and prevention. Moreover, I argue that the information available through social media can facilitate IHL enforcement.

A. Monitoring

1. Legal Framework

States have legal obligations to monitor and report IHL violations, derived from international conventions as well as customary law. Here is a non-exhaustive list. Third party States, as well as the ICRC, have monitoring obligations and functions.⁶³ In the event of a conflict, Protecting Powers and their delegates, appointed for that particular conflict, should be able to go wherever protected persons are in order to monitor the conditions in which such persons are kept.⁶⁴ Moreover, High Contracting Parties or parties to the conflict have the obligation to require from their military commanders reports of any breaches of the Geneva Conventions or of the Additional Protocols.⁶⁵

Customary monitoring obligations also exist.⁶⁶ For example, it is required in certain contexts to identify IHL violation situations without delay, monitor such situations and rapidly emit recommendations.⁶⁷ However, some argue that the monitoring and reporting mechanisms outlined above have proven unused or ineffective.⁶⁸ For this reason, I explore how NGOs, with social media as a new available tool, have the potential to fill this gap.

2. Social Media's Added Value to NGOs' Undertaking

⁶⁰ Gerald M Steinberg & Anne Herzberg, "NGO Fact-Finding for IHL Enforcement: In Search of a New Model" (2018) 51:2 Israel LR 261 at 263.

⁶¹ Kleffner, *supra* note 45 at 602.

⁶² Sumariwalla, *supra* note 44 at 327; ICRC 28th International Conference, *supra* note 52 at 57.

⁶³ Sumariwalla, *supra* note 44 at 593-594.

⁶⁴ Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 287 art 143 (entered into force 21 October 1950) [GCIV].

⁶⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, 8 June 1977, 1125 UNTS 3 arts 87(1), 87(3) (entered into force 7 December 1978) [API].

⁶⁶ See generally Jean-Marie Henckaerts & Louise Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules* (Cambridge: Cambridge University Press, 2005), online: <<https://www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf>>; see also Elizabeth Wilmshurst & Susan Breau, eds, *Perspectives on the ICRC Study on Customary International Humanitarian Law* (Cambridge: Cambridge University Press, 2007).

⁶⁷ EC, Updated European Guidelines on promoting compliance with international humanitarian law, [2009] OJ, C 303/12, art 15(a).

⁶⁸ See e.g. Sumariwalla, *supra* note 44 at 287.

Social media can be used as a tool to aggregate or disseminate information, making monitoring and analysis easier.⁶⁹ Indeed, the nature of the information available on social media, i.e. open, decentralized, geographic, and in real time, enhances the monitoring and reporting capacities of NGOs.⁷⁰ First, social media platforms facilitate conflict monitoring and documenting as many users, who happen to be in places of conflicts, regularly and profusely contribute information to these open-source platforms, without NGOs necessarily needing to be on the ground.⁷¹

Second, social media provides a venue for NGOs to expose IHL violations at very low costs, as information can be published in real time, and can be disseminated immediately to a previously unthinkable number of people. This IHL violation publicity mechanism is a leverage tool which can increase NGOs' pressure on States who are violating their obligations or who are supporting others violating their obligations.⁷² It is, however, important to note this does not increase NGOs' capacity to pressure States that are already indifferent to their messages. Rather, social media platforms simply provide another means for NGOs to shame illegal practices undertaken by parties during a conflict. A few NGOs are known to contribute to IHL monitoring efforts in this way, like Uhsahidi, and its derivatives Crowdmap and Swift River.⁷³

3. Consequences of Social Media Use by NGOs in IHL Monitoring and Reporting Dynamics

As presented above, traditional monitoring and reporting mechanisms are mostly ineffective, which partially explains why compliance is an important IHL concern. However, the type of information available through social media has supported NGOs' active initiative to fill the gaps left by States and international organizations by increasing their monitoring and reporting capacity (see section III.1.b). This can result in salutary changes in IHL compliance mechanisms. First, open-source, geo-referenced, real-time information allows for greater scrutiny of state behaviour during armed conflicts, as more, detailed, and rapidly acquired information is available.⁷⁴ Indeed, this type information makes States' actions more perceptible than before, as it is all recorded, be it through tweets, texts, Facebook or YouTube videos.⁷⁵

⁶⁹ See also Lüge, *supra* note 18 at 6.

⁷⁰ See Search for Common Ground, *supra* note 11 at 17–18.

⁷¹ Herzberg & Steinberg, *supra* note 19 at 505, 507; see also Paul J. Zwier, "Social Media and Conflict Mapping in Syria: Implications for Peacemaking, International Criminal Prosecutions and for TRC Processes" (2015) 30:2 Emory Intl L Rev 169 at 192, 196.

⁷² Herzberg & Steinberg, *supra* note 19 at 504, 506.

⁷³ Search for Common Ground, *supra* note 11 at 15.

⁷⁴ Herzberg & Steinberg, *supra* note 19 at 494.

⁷⁵ Similar arguments are made in relation to the use of new technologies by military forces, increasing the accountability of said forces because new technologies not only record information about the enemy, but also about the armed forces using such technologies. See Jack M. Beard, "Law and War in the Virtual Era" (2009) 103 Am J Intl L 409 at 438.

Second, the amount and type of information available through social media makes it possible to increasingly keep IHL actors accountable.⁷⁶ This is so because the actions of States and armed groups are monitored in more detail, but also because the information that is published by NGOs (retrieved from social media, and/or published, amongst other places, on social media) can greatly impact public opinion, another strong accountability mechanism to which NGOs can resort.⁷⁷ Considering the above, the stakes of ignoring one's own violation or of contributing to another state's violation can arguably become higher faster. Thus, social media creates and enhances the effectiveness of different points of pressure, which can impact IHL compliance of States and armed groups, as more information can be used to engage their responsibility.

To conclude, the information that can be acquired through social media, and how it can affect public opinion, has increased NGOs' capacity to scrutinize and hold accountable States and groups involved in armed conflicts. Social media has thus proven to be a salutary tool in helping NGOs fill monitoring and reporting gaps within the current IHL dynamics.

B. Prevention

1. Legal Framework

In 2005, the World Summit Outcome United Nations (UN) General Assembly Resolution put in place the responsibility to protect (R2P).⁷⁸ The R2P was meant to question, or rather reconceptualize, sovereignty in order to allow the international community to intervene so as to protect, and assist in a timely manner, population or groups of States that failed to duly protect their population.⁷⁹ Unfortunately, this prevention doctrine is still controversial today, as certain States resist the liberty it provides for the international community to intervene. However, there exists a more general obligation, accepted by all High Contracting Parties, and dictated by Common Article 1 of the Geneva Conventions, to respect and ensure respect for these conventions in all circumstances.⁸⁰

Common Article 1 has been argued by many as an alternative prevention obligation to R2P. Said obligation has positive and negative aspects. First, High Contracting Parties have the obligation not to help other parties to violate their IHL obligations. If a Contracting Party aids or assists another in his violation, such State will be equally responsible as the perpetrator State.⁸¹ Furthermore, Common Article 1 suggests a positive obligation: High Contracting Parties are required to take action against violators and use

⁷⁶ Brigitte Rohwerder, *Social Media and Conflict Management in Post-Conflict and Fragile Contexts*, January 2015, GSDRC Helpdesk Research Report 1184, online: Governance and Social Development Resource Centre <www.gsdrc.org/docs/open/HDQ1184.pdf> at 1.

⁷⁷ Herzberg & Steinberg, *supra* note 19 at 506.

⁷⁸ *Resolution 60/1 on the 2005 World Summit Outcome*, A/Res/60/1, UNGAOR, 60th Sess, Supp No 49, UN Doc (2005).

⁷⁹ Kleffner, *supra* note 45 at 305.

⁸⁰ ICRC 28th International Conference, *supra* note 53 at 21.

⁸¹ Draft Articles on Responsibility of States for Internationally Wrongful Acts, 53rd Sess, International Law Commission, UN Doc A/56/10, art 16 (2011).

their influence to make the violations stop.⁸² This interpretation of Common Article 1 is now also crystallized in customary law.⁸³ Despite the existence of such an obligation, the IHL prevention framework is rather lacking.

The creation of R2P was an attempt to recognize the importance of preventing egregious atrocities, at the expense of sovereignty concerns.⁸⁴ The *UN Office on Genocide Prevention and the Responsibility to Protect* was set up around the same time at the R2P was adopted, with similar intentions.⁸⁵ The *UN Office*, amongst other things, has put together guidelines entitled “Framework of Analysis for Atrocity Crimes: A tool for prevention” in order to readily recognize common and specific risk factors of potential genocide climates.⁸⁶ This UN initiative has also tried to provide early-warning mechanisms and enhance prevention capacity. Both the R2P and the creation of the *UN Office* demonstrate that despite States not wanting to abandon their sovereignty and adopt formal binding mechanisms, there is still a consensus that conflict prevention is important, especially when egregious atrocities could be committed. This is also demonstrated by a series of UN General Assembly resolutions that have been adopted through the years.⁸⁷ Considering the above, I will now evaluate how social media has been salutary for IHL prevention dynamics in light of the lacking framework outlined above.

2. Social Media’s Added Value in the Prevention Context

Prevention is enhanced when good warning systems are in place; ones that are close to the ground, field-based, involve local NGOs and empower local stakeholders directly.⁸⁸ The more information is available, the more a warning system is accurate.⁸⁹ Although authors voice concerns as to the quality of the information available through social media (see section II.c), different initiatives, like Ushahidi’s Swift River, attempt to analyze information in terms of its reliability and relevance in order to palliate this concern.⁹⁰ These

⁸² ICRC 28th International Conference, *supra* note 53 at 22.

⁸³ ICRC, “Rule 161. International Cooperation in Criminal Proceedings” online: Customary IHL Database <https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter44_rule161>

⁸⁴ Pfanner, *supra* note 55.

⁸⁵ United Nations Office on Genocide Prevention and the Responsibility to Protect, “Our Mandate” online: United Nations <www.un.org/en/genocideprevention/office-mandate.html>.

⁸⁶ United Nations, “Framework of Analysis for Atrocity Crimes: A tool for prevention” (2014), online: UN Office on Genocide Prevention and the Responsibility to Protect <www.un.org/en/genocideprevention/documents/publications-and-resources/Framework%20of%20Analysis%20for%20Atrocity%20Crimes_EN.pdf>.

⁸⁷ See for e.g. *Resolution 1366 on Early Warning and the Prevention of Armed Conflict*, S/RES/1366, UNSC, 4360th meeting, UN Doc 01-52448 (E) (2001) 1; *Resolution 2150 on the Occasion of the 20th Anniversary of the Rwandan Genocide*, S/RES/2150, UNSC, 7155th meeting, UN Doc 14-30151 (E) (2014) 1; *Resolution 22/22 on the Prevention of Genocide*, A/HRC/RES/22/22, UNGA, 22nd Sess, UN Doc GE.13-12981 (2014) 1; *Resolution 28/34 on the Prevention of Genocide*, A/HRC/RES/28/34, UNGA, 28th Sess, UN Doc GE.15-07172 (E) (2015) 1; *Resolution 33/19 on Human Rights and Transitional Justice*, A/HRC/RES/33/19, UNGA, 33rd Sess, UN Doc GE.16-17223 (E) (2016) 1; *Resolution 69/323 on the International Day of Commemoration and Dignity of the Victims of the Crime of Genocide and of the Prevention of This Crime*, A/RES/69/323, UNGA, 69th Sess, UN Doc 15-15498 (E) (2015) 1; *Resolution 7/25 on the Prevention of Genocide*, A/HRC/RES/7/25, HRC, 41st Meeting (2008).

⁸⁸ Search for Common Ground, *supra* note 11 at 14.

⁸⁹ Rohwerder, *supra* note 76 at 2.

⁹⁰ Swift River was put in place to provide a tool during the first moments of crisis to civilians and rescuers. This platform is designed to aggregate, structure and provide an application programming interface for crisis data, e.g. Tweets of an attack, explosion, etc. See Erik Hersman, “Explaining Swift River” Ushahidi (9 April 2019), online: <www.ushahidi.com/blog/2009/04/09/explaining-swift-river>.

tools allow NGOs to identify trends of IHL violations within the information available through social media.⁹¹ Furthermore, other tools analyzing social media information trends allow NGOs to identify potential impacts of IHL violations and specific community vulnerabilities,⁹² such as Ushahidi⁹³ and ICT4Peace.⁹⁴

Thanks to these information analysis tools, crisis and crowd mapping initiatives have drastically increased. For example, the Libya Crisis Map was put in place at the request of the UN, in order to keep the international organization informed about the conflict.⁹⁵ This is salutary for IHL prevention as such maps are early-warning systems themselves.⁹⁶ These initiatives can be used for monitoring purposes, to scrutinize and hold States accountable (see section III.1). Yet more importantly, crisis and crowd mapping can facilitate the coordination of international or humanitarian intervention if States commit IHL violations.⁹⁷ Hence, early-warning system tools, like crowd mapping, which are composed in great part from information available through social media, can change the dynamics of IHL violation prevention. Indeed, they make information readily available in an organized way for IHL actors to be aware, in real time, of existing tensions and instances of violence. This in turn increases the NGOs' and the international community's knowledge and their preventive capacity faster than ever before, thus making it easier to readily intervene in the event of egregious atrocities.

3. Elevated Relevance of Prevention

Some suggest that despite increased prevention capacity, States' lack of will to intervene still remains the main obstacle to prevention. Syria is often cited as an example.⁹⁸ Yet, prevention has become especially pertinent as social media may also alter post-conflict reconciliation dynamics. Indeed, increased information accessibility in real time has affected the truthfulness of post-conflict transition.⁹⁹ While before there was a "blind trade" at the post-conflict stage between justice and truth, since a large amount of evidence of IHL violations was not readily available, it is not the case anymore. Social media provides a new

⁹¹ An example of such tool is the LRA Crisis Tracker, operated by the NGO Invisible Children. This platform aggregates the information provided by Invisible Children's early warning radio network that spreads across the Central African Republic and the Democratic Republic of Congo and is meant to identify instances of violence in real time. "LRA Crisis Tracker" *Invisible Children*, online: <<https://www.lracrisistracker.com/>>. See also Search for Common Ground *supra* note 11 at 13.

⁹² Search for Common Ground, *supra* note 11 at 13-15.

⁹³ Ushahidi started as a monitoring interface during the 2011 Kenyan election because of the instances of unrest and violence. This interface aggregates information that is contributed by text, video, sound recording, or through submitted reports. The content is then accessible in real time, on an interactive platform that maps the location of the source. The way the information is aggregated depends of the need of the user. This thus allows actors involved in crises to have one the ground information, e.g. location of injured population, and deploy its resources accordingly. See "Ushahidi", online: <<https://www.ushahidi.com/enterprise/>>.

⁹⁴ ICT4Peace does not provide a technological interface for on-the-ground information like Ushahidi. Rather, this nonprofit foundation provides reports and capacity building tools for crisis information management and strategy, among other things. See "Crisis Information Management Capacity Building", online: ICT4Peace <<https://ict4peace.org/activities/crisis-information-management-capacity-building/>>.

⁹⁵ Stottlemire, *supra* note 41 at 26.

⁹⁶ Herzberg & Steinberg, *supra* note 19 at 507.

⁹⁷ Stottlemire, *supra* note 41 at 26; Herzberg & Steinberg, *supra* note 19 at 507.

⁹⁸ See Zwier, *supra* note 71.

⁹⁹ *Ibid* at 209.

source of information which keeps the affected population and the international community aware, to a large extent, of violations taking place during the conflict.¹⁰⁰ Initiatives like Eyes in Darfur from Amnesty International have participated to highlight said violations.¹⁰¹

This new post-conflict reality of increased truthfulness may lead to better justice (further discussed in section III.3), but also harder reconciliation.¹⁰² The ‘fog of war’ has given place to a new era where impunity is harder to sustain.¹⁰³ Less impunity is favourable to post-conflict transition. Yet, it can become harder for people to accept giving amnesty to violators of IHL obligations, knowing what they did in extensive detail. Thus, although prevention seems more achievable, reconciliation seems less so. This potential IHL dynamic change reinforces the plea for more prevention initiatives from the international community in the first place. Furthermore, enhancing NGOs monitoring and preventive capacities would be a less intrusive and fatal way for the international community to provide help, rather than intervening in a long-lasting violent conflict.

C. Enforcement

1. IHL's Current Enforcement Framework and its Limits

The framework of IHL provides an array of enforcement mechanisms and State obligations. Amongst other things, enquiry processes can be initiated if parties to a conflict request so.¹⁰⁴ Moreover, States can punish and capture perpetrators of grave breaches.¹⁰⁵ Universal jurisdiction over grave breaches of IHL obligations¹⁰⁶ provides the legal basis for States to enforce their persecution obligations.¹⁰⁷ The IHL enforcement framework also includes a fact-finding commission which can be put in place to enquire into alleged violations.¹⁰⁸ Although fact-finding efforts play in an important role for IHL enforcement, this commission has unfortunately proven largely ineffective due to how it was modelled.¹⁰⁹

¹⁰⁰ *Ibid* at 193.

¹⁰¹ See “Sudan (Darfur): Amnesty International adopts powerful technology in campaign to protect people in Darfur” (6 June 2007), *Amnesty International UK: Press Release*, online: < <https://www.amnesty.org.uk/press-releases/sudan-darfur-amnesty-international-adopts-powerful-technology-campaign-protect-people>>.

¹⁰² See Zwiwer, *supra* note 71 at 211.

¹⁰³ Varghese, *supra* note 17 at 2.

¹⁰⁴ See *Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field*, 12 August 1949, 75 UNTS 31 art 52 (entered into force 21 October 1950) [GCI]; *Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, 12 August 1949, 75 UNTS 85 art 53 (entered into force 21 October 1950) [GCII]; *Convention Relative to the Treatment of Prisoners of War*, 12 August 1949, 75 UNTS 135 art 132 (entered into force 21 October 1950) [GCIII]; API, *supra* note 65 at art 149.

¹⁰⁵ See GCI, *supra* note 104, art 51; GCII, *supra* note 104, art 52; GCIII, *supra* note 104, art 131.

¹⁰⁶ See also Kleffner, *supra* note 45 at 312; Aday, *supra* note 54 at 50. See also API, *supra* note 65 at art 146.

¹⁰⁷ See GCI, *supra* note 104, art 49.

¹⁰⁸ Sumariwalla, *supra* note 44 at 601; Aday, *supra* note 54 at 23. See also API, *supra* note 66 at art 90(2)(c)(i).

¹⁰⁹ Pfanner, *supra* note 55 at 284–285.

First, the commission is only seized conditional to the parties' consent.¹¹⁰ Second, the commission cannot publicize its findings unless authorized by the parties, thus limiting the impact of the findings on the parties' behaviour. Third, it can only emit recommendations rather than judicial opinions because of its quasi-judicial nature.¹¹¹

A further possibility, that is distinct from States prosecuting grave breach perpetrators nationally using their universal jurisdiction, is referring said perpetrators to an international court or tribunal, be it the ICC or an ad hoc tribunal such as the International Criminal Tribunal for the Former Yugoslavia (ICTY). These international venues, which can establish criminal responsibility, are not to be underestimated as they actively attempt to create concrete standards for the behaviour of state agents, and work towards their implementation.¹¹² Furthermore, using such mechanisms enhances States' accountability¹¹³ and thus goes counter to the culture of impunity that is still largely present in IHL.¹¹⁴ However, States only sporadically resort to the enforcement mechanisms presented above,¹¹⁵ as most require punctual States' consent for them to be used. They thus are quite ineffective in reining in States' behaviour and garnering respect of IHL obligations.¹¹⁶

2. Changing Evidentiary Dynamics

Additionally, although individual criminal responsibility is one avenue to enforce certain IHL obligations, it has intrinsic limitations. Indeed, the ability to get justice is often compromised by the nature of the crimes themselves, as evidence availability issues arise.¹¹⁷ First, cases of war crimes or crimes against humanity raise safety issues, for example. Investigating such crimes is dangerous, and witnesses often decline to testify; if said witnesses are even still alive.¹¹⁸ Social media changes this dynamic, as information gathered through such platforms can have a corroboration function, requiring fewer witness to testify, or none at all, while also strengthening the witness's testimony, further discussed below.¹¹⁹

¹¹⁰ See API, *supra* note 65 at art 90(2)(a); Pfanner, *supra* note 55 at 286. This is so, unless the High Contracting Parties have accepted the ipso facto competence of the Commission, which is the case for about 75 States. See "What is the International Humanitarian Fact-Finding Commission and what is its role in armed conflict situations?" (2017), online: International Humanitarian Fact-Finding Commission <http://www.ihffc.org/Files/en/pdf/2017_ihffc_brochure_english_new.pdf>.

¹¹¹ Pfanner, *supra* note 55 at 285.

¹¹² See also Payam Akhavan, "Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities" (2001) 95 Am J Intl L 7 at 23, 28.

¹¹³ See Zwier, *supra* note 71 at 184.

¹¹⁴ See Akhavan, *supra* note 112 at 8.

¹¹⁵ Aday, *supra* note 54 at 22.

¹¹⁶ See Pfanner, *supra* note 55 at 285.

¹¹⁷ See Zwier, *supra* note 71 at 184.

¹¹⁸ See Keith Hiatt, "Open Source Evidence on Trial" (2015–2016) 125 Yale LJ Forum 323 at 323.

¹¹⁹ See *ibid* at 325.

Second, such crimes raise the issue of the temporal availability of information.¹²⁰ “[T]oday’s investigation concerns yesterday’s atrocities.”¹²¹ If we look at the ICTY for example, certain defendants were brought before the Tribunal long after the alleged crimes were committed. For instance, the trial of Radovan Karadžić started in 2008, although though his arrest warrant was issued in 1995.¹²² The fact that most trials take place five, ten, or even twenty years after the crimes were committed raises evidence admissibility issues, which can compromise establishing criminal responsibility, at the expense of letting a rampant impunity culture survive.¹²³ In this sense, social media can also influence the current evidentiary dynamic by helping attenuate the evidentiary timeline of international justice.¹²⁴

Another issue tied to enforcement and the use of social media content is evidence admissibility. Here, I use the ICC’s admissibility standard as a working example. According to the ICC Rules of Procedure and Evidence, admissibility is evaluated according to the evidence’s relevance and probative value.¹²⁵ The probative value of a piece of evidence is usually assessed in function of two things: its reliability and its credibility.¹²⁶ In this context, while reliability refers to the quality of the piece of evidence¹²⁷ and the form in which the information is delivered, credibility alludes to whether the piece of evidence, reliability aside, depicts reality, and should be believed.¹²⁸ The literature and recent jurisprudence demonstrate that the international criminal courts and tribunals’ standards of admissibility are in fact quite flexible, especially the ICC’s.¹²⁹ Most pieces of evidence are admitted, and it is rather the weight given to them that varies.¹³⁰ A new evidentiary paradigm has emerged within the realm of international criminal law, one that is centred around the weight given to evidence rather than its availability, or lack thereof. Some have argued that this shift comes as a reaction to evidence of IHL violations being more and more available in real time and in a digitalized format, to which social media has contributed.¹³¹

¹²⁰ See *ibid* at 326.

¹²¹ *Ibid*.

¹²² See “Karadžić (IT-95-5/18)” *ICTY: Cases*, online: <www.icty.org/case/karadzic/4>.

¹²³ Akhavan, *supra* note 112 at 8.

¹²⁴ Hiatt, *supra* note 118 at 326.

¹²⁵ Rules of Procedure and Evidence of the International Criminal Court, PCNICC/2000/1/Add.1 s 64(9) (2000) [ICC Rules].

¹²⁶ See Aida Ashouri, Caleb Bowers & Cherrie Warden, “The 2013 Salzburg Workshop on Cyber Investigations: An Overview of the Use of Digital Evidence in International Criminal Courts” (2014) 11 *Digital Evidence & Elec Signature L Rev* 115 at 116 [Ashouri et al]; Wairagala Wakabi, “Judges Admit NGO Reports into Evidence Against Bemba” (July 8, 2013), online: International Justice Monitor <<https://www.ijmonitor.org/2013/07/judges-admit-ngo-reports-into-evidence-against-bemba/>>.

¹²⁷ Martin Floss, “Reliability” in *Encyclopedia of Criminology and Criminal Justice*, 1st ed by Jay S Albanese (2014).

¹²⁸ William J Stewart, *Collins Dictionary of Law*, 3rd ed (2006) *sub verbo* “credibility”.

¹²⁹ The ICC admitted recordings that were not authenticated, since authentication is only one factor to determine the probative value of the evidence. See *Prosecutor v Jean- Pierre Bemba Gombo*, ICC–01/05–01 /08, Decision on the Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute, (8 October 2012) at paras 80–122 (International Criminal Court). Moreover, the ICC said it would consider the probative value of emails on a case by case basis after the Prosecution objected to their admissibility. *Prosecutor v Lubanga*, ICC–01/04–01/06, Decision on Confirmation Charges, (29 January 2007) at paras 131–132 (International Criminal Court). See also Ashouri et al, *supra* note 126 at 116; see also Hiatt, *supra* note 118 at 329.

¹³⁰ The weight is attributed at the end of the process, once all evidence is admitted, in accordance with Rule 63(2) of the ICC Rules, *supra* note 125. See also *Prosecutor v Lubanga*, ICC–01/04–01/06, Decision on Confirmation Charges para 9 (29 January 2007).

¹³¹ See Zwier, *supra* note 71 at 205.

3. Social Media Related Evidentiary Hurdles

Yet, evidence gathered through social media is not free of hurdles. First, such evidence raises reliability concerns. Indeed, the lack of context that is particular to information gathered through social media (see section II.b) makes it hard to assess if the evidence is reliable. This is reinforced by the open source nature of social media information, as everyone can contribute content regardless of the narrative they promote. It is thus sometimes hard to establish the impartiality of the evidence without context.¹³² Moreover, not only can everyone contribute, but it can be done anonymously. Yet, authors are often in the best position to attest of the evidence's reliability. This provenance issue is thus another hurdle of using social media content as evidence.¹³³ However, these reliability hurdles are not insurmountable and can be addressed in the following ways. If the author is unknown, establishing the chain of custody can increase the evidence's probative value.¹³⁴ Additionally, it is easier to establish videos' probative value because of their self-identification type.¹³⁵ Finally, it is rare that evidence gathered through social media constitutes crime-based evidence, although it can. Rather, said evidence is more generally used as linkage evidence¹³⁶ to corroborate¹³⁷ other primary evidence.

Second, authentication is particularly at stake with regard to evidence derived from social media. Authentication processes are meant to make sure the evidence has not been altered between its creation and when it is presented to the court.¹³⁸ As demonstrated above, international courts nonetheless are flexible in this regard,¹³⁹ and are open to accept transcripts or other corroborative evidence in order to consolidate evidence derived from social media.¹⁴⁰ Alternatively, courts also look into the chain of custody of the evidence in order to make sure it was not manipulated.¹⁴¹

Issues of reliability and authentication, especially relevant in the context of evidence gathered through social media, are not as limiting as they might seem. First, "[w]hen taken in context, corroborated and explained by knowledgeable witnesses, open source evidence can be very compelling."¹⁴² This thus highlights the importance of verification of evidence, which can be done using triangular methods¹⁴³ and/or mostly relevant in the context of

¹³² Wakabi, *supra* note 126.

¹³³ See Ashouri et al, *supra* note 126 at 121.

¹³⁴ See *ibid.*

¹³⁵ See Zwier, *supra* note 71 at 203.

¹³⁶ Herzberg & Steinberg, *supra* note 19 at 1382.

¹³⁷ Browne et al, *supra* note 29 at 1344.

¹³⁸ Ashouri et al, *supra* note 126 at 117.

¹³⁹ See *ibid.*

¹⁴⁰ See *ibid* at 119.

¹⁴¹ See *ibid* at 121; Gregory, *supra* note 32 at 1381.

¹⁴² Hiatt, *supra* note 120 at 327.

¹⁴³ See *ibid.*

social media, crowdsourcing, as discussed below.¹⁴⁴ More importantly, social media derived evidence allows circumventing availability hurdles, as it makes evidence-gathering safer and quicker. Second, reliability and authentication hurdles have proven to affect only the weight granted to the evidence rather than its admissibility, due to the flexible evidentiary standards of international courts and tribunals.¹⁴⁵ The increased use of social media derived evidence can thus participate to the evidentiary paradigm shift from availability to weight, which demonstrates its justice-enhancing potential.

4. Solutions to Social Media Related Evidentiary Hurdles

Two main solutions are available to address the evidentiary hurdles that are specific to evidence gathered through social media. One is crowdsourcing, which contributes to the verification of the evidence once it is gathered. The other is institutionalization of collection, which takes place before and during evidence gathering. First, crowdsourcing is similar to triangulation, which is a long-established verification technique, but operates on a larger scale.¹⁴⁶ Crowdsourcing involves corroborating information gathered through social media by analyzing other information available on the same issue, in order to verify the evidence and enhance the probative value thereof.¹⁴⁷ It is possible to do so with social media derived evidence because of its open source and digital nature. Moreover, systems are available to do so in an automated way, such as Ushahidi's derivatives.¹⁴⁸

A second mechanism, institutionalization or standardization of data collection, would also help enhance evidence reliability. Some authors suggest that an ad hoc protocol should be put in place to create clear standards for data collection.¹⁴⁹ Clear standards could enhance transparency and help coordination between different actors involved in criminal procedures, including NGOs, prosecutors, etc.¹⁵⁰ For example, an E-Court Protocol was instituted by the ICC in order to manage cases that had digital components to them.¹⁵¹ Although this is a post-evidence gathering mechanism, it still shows that institutions are taking actions to integrate digital evidence similar to social media gathered evidence in a reliable way. As a matter of fact, the ICC itself, in analyzing the *raison d'être* of the E-Court Protocol, said that "the exponential increase in the volume of information, together with real problems that have emerged over information management, has meant that standardized protocols are necessary to govern how information can be prepared and presented."¹⁵²

¹⁴⁴ **Fn146:** Abigail Edge, "Social media and the changing face of conflict reporting" (14 July 2016), online: Journalism <<https://www.journalism.co.uk/news/social-media-and-the-changing-face-of-conflict-reporting/s2/a654955/>>; Rohwerder, *supra* note 76 at 2.

¹⁴⁵ Ashouri et al, *supra* note 126 at 122.

¹⁴⁶ See Hiatt, *supra* note 120 at 327; see also Költzow, *supra* note 12 at 12.

¹⁴⁷ Roxana Radu, Nicolo Zingales & Enrico Calandro, "Crowdsourcing Ideas as an Emerging Form of Multistakeholder Participation in Internet Governance" (2015) 7:3 Policy & Internet 362 at 366 [Radu et al]; *see supra* note 17 at 2; Herzberg & Steinberg, *supra* note 19 at 507.

¹⁴⁸ Hersman, *supra* note 90.

¹⁴⁹ See Zwier, *supra* note 71 at 204; see also Lüge, *supra* note 18 at 3.

¹⁵⁰ Radu et al, *supra* note 147 at 366.

¹⁵¹ See *Prosecutor v Lubanga*, ICC-01/04-01/06-1127, Public Decision on the E-Court Protocol para 19 (24 January 2008) cited in Ashouri et al, *supra* note 128 at 121, 124.

¹⁵² *Ibid.*

“Increasingly, social media and online video and image sharing services provide a rich, open-source of information about crimes and their perpetrators.”¹⁵³ Social media derived evidence is extremely relevant within the IHL framework. Indeed, information gathered through social media can be a “witness tool” on the ground and thus has the potential to enhance justice.¹⁵⁴ For example, some YouTube and Facebook videos evidence the use of chemical weapons against civilians by the Syrian government.¹⁵⁵ Hence, it is important to acknowledge social media’s role within IHL dynamics, and how it has contributed to an evidentiary paradigm shift, in order to tap into its potential and address its deficiencies, as I attempted to do above.

D. Further Structural Change

1. Closing Remarks on Monitoring, Prevention and Enforcement

IHL is plagued with an intrinsic paradox, which is unfortunately reinforced by States’ lack of will to put in place constraining compliance mechanisms that do not require their consent every time they are used. Indeed, while the aim of IHL is to protect its beneficiaries, i.e. civilians, wounded and *hors de combat* individuals,¹⁵⁶ IHL is a state-centric system, according to which its application and the respect for the obligations it creates depend strictly on the willingness of States.¹⁵⁷ I argue that social media, despite having certain limits, can nonetheless contribute to attenuating this paradox, as it makes real-time, geo-centred, open source digital information available. This is characterized in different ways which are explored throughout section III of this paper.

First, the information available through social media enhances NGOs’ capacity to protect IHL beneficiaries, as it facilitates monitoring and prevention initiatives. Social media platforms also constitute additional points of pressure on governments’ behaviour towards IHL compliance because of their impact on public opinion. This in turn allows for greater scrutiny and accountability of IHL actors. Second, social media contributes to facilitating IHL enforcement by attenuating evidentiary availability issues, while being a new source of evidentiary content. This brings IHL closer to a victim-centred framework, in which victims’ perspectives, through their social media input, contribute more closely to the monitoring, prevention and enforcement dynamics of IHL. In this sense, a greater, overarching effect of social media on IHL dynamics has been to mainstream the victim perspective throughout while also participating in tackling the impunity culture currently in place.

2. Further Procedural Shift to Address IHL’s Paradox

I suggest a further procedural shift to attenuate IHL’s paradox, that is impacted by, but not directly related to, social media. The literature suggests that an individual complaint

¹⁵³ Hiatt, *supra* note 118 at 324.

¹⁵⁴ Rozario, *supra* note 14 at 250.

¹⁵⁵ See Zwiier, *supra* note 71 at 192.

¹⁵⁶ Corn & Schoettler, *supra* note 46 at 238; Kleffner, *supra* note 45 at 297.

¹⁵⁷ Sumariwalli, *supra* note 44 at 617.

mechanism should be put in place to remedy the lack of enforcement IHL is currently facing¹⁵⁸ and to actively include victim-input within the IHL framework.¹⁵⁹ International efforts have already taken a stance on this issue but have never succeeded in creating reform.¹⁶⁰

In the same way that Human Rights Law is supported by a treaty body and a commission, many suggest that it should be so for IHL as well.¹⁶¹ A treaty body that responds to the Geneva Conventions and the Additional Protocols could be established.¹⁶² This could take the form of an IHL Commission, with within it a quasi-judicial Committee on IHL or a Committee of States or IHL experts forming a ‘diplomatic forum.’¹⁶³ Finally, such Commission could provide a reporting system, examine complaints by/against States or armed groups, observe and set fact-finding enquiries and provide quasi-judicial opinions on violations.¹⁶⁴

Instituting an individual complaint mechanism does not come without complexities and limits. As to the complexities, issues of competence, legal basis for jurisdiction and the intricacies of imposing itself on non-state actors arise.¹⁶⁵ Moreover, there are limits to suggesting that such a body be instituted. Some academics and practitioners are concerned that an additional body within the IHL framework would lead to effort fragmentation and might duplicate certain tasks already covered by other institutions such as the ICRC.¹⁶⁶ Although these are sound concerns, another, even more constraining and that has proven to be at the forefront of the lack of IHL enforcement, is the absence of State will.

Despite the limits and complexities outlined above, such a mechanism should still be considered for the following reasons. First, developing a tandem mechanism to the ones which already exist could be designed on the premise that States have to sign such complaint mechanism’s statute or protocol once, thereby replacing the current and problematic ‘consent on a punctual basis system’ of the fact-finding commission and enquiries (see section III.3.a). This would be more sustainable as it could circumvent the punctual consent issue in the long term. Second, the dynamic change provoked by instituting the mechanism would be salutary for IHL as it would allow IHL to re-appropriate its violations, which are

¹⁵⁸ Marco Sassòli, “Possible Legal Mechanisms to Improve Compliance by Armed Groups with International Humanitarian Law and International Human Rights Law,” (Paper “Curbing Human Rights Violations by Non-State Armed Groups” delivered at the Centre of International Relations, University of British Columbia, Vancouver, 13-15 November 2003), online: Armed Groups Project <<http://www.armedgroups.org/index.php?option=content&task=view&id=45>>.

¹⁵⁹ Corn & Schoettler, *supra* note 46 at 238.

¹⁶⁰ See “Hague Appeal for Peace and Justice for 21st Century” (2000) art 13, online: <<http://www.haguepeace.org/resources/HagueAgendaPeace+Justice4The21stCentury.pdf>>; “Draft Instrument Establishing an Individual Complaints Procedure for Violations of IHL” (14 July 2000), online: Amsterdam International Law Clinic <www1.jur.uva.nl/ailec/Individual%20complaints%20and%20international%20humanitarian%20law.pdf>; Corn & Schoettler, *supra* note 46 at 239.

¹⁶¹ Kleffner, *supra* note 45 at 306; ICRC 28th International Conference, *supra* note 52 at 23, 61.

¹⁶² ICRC 28th International Conference, *supra* note 52 at 23.

¹⁶³ *Ibid* at 62-63.

¹⁶⁴ *Ibid* at 61.

¹⁶⁵ Corn & Schoettler, *supra* note 46 at 243-4, 248.

¹⁶⁶ ICRC 28th International Conference, *supra* note 52 at 24.

currently drifting towards *Human Rights Law* bodies.¹⁶⁷ This re-appropriation would be eased by the evidentiary paradigm shift to which social media contributes, as discussed in section III.3.b. Also, such a mechanism would reinforce the ICC's current efforts to establish behaviour standards for States. This could thus lead to increased compliance and justice, and could potentially favour IHL advancement since more standards of behaviour would be created. Finally, this mechanism would be more victim-centred, thus bringing IHL closer to its beneficiaries.

III. Recommendations

Although recommendations have been made throughout this paper to address certain specific concerns or hurdles raised by social media in the context of IHL, more general recommendations should be considered in closing. First, developing standards for recording the information seems crucial if social media is to play an important role within the IHL framework. Such standards can take the form of guidelines or tool sets,¹⁶⁸ general or specific, regarding data encryption and coding in a protocol-like manner.¹⁶⁹ What is important to highlight in these standards is the importance of what is recorded and the manner in which it is done.¹⁷⁰ For example, the depth of understanding provided by the data recording is as important as the crime it tries to denounce.¹⁷¹ Moreover, both sides of the story are crucial, as they help establish the content's impartiality, so such standards or protocol need to consider issues of disappearing archives.¹⁷² An informal tool, Creating a Verification Process and Checklist(s), can be useful during the transition period, to record information in a more standardized way.¹⁷³ Moreover, NGO best practices can be circulated,¹⁷⁴ like the ICRC's guide *How to Use Social Media to Better Engage with People Affected by Crises: a brief guide for those using social media in humanitarian organizations*.¹⁷⁵

Second, emphasis should be put on strengthening capacity. Although the international community is usually reluctant to intervene in conflicts, enhancing NGOs capacities regarding social media analytical and sharing tools could present itself as a more sustainable and less political way to contribute to monitoring, prevention, and enforcement efforts.¹⁷⁶ Information sharing reinforces the need for clear and common standards, so as to

¹⁶⁷ *Ibid* at 23; Kleffner *supra* note 45 at 293-295.

¹⁶⁸ Radu et al, *supra* note 147 at 366; Gregory, *supra* note 32 at 71.

¹⁶⁹ See Gregory, *supra* note 32 at 198, 204; Arvinder Sambei, "Intelligence Cooperation versus Evidence Collection and Dissemination," chapter 7 in Larissa van den Herik and Nico Schrijver, eds, *Counter-terrorism Strategies in an International Fragmented Legal Order* (Cambridge University Press, 2013) 212 at 234.

¹⁷⁰ See also Gregory, *supra* note 32 at 1382.

¹⁷¹ See also Corn & Schoettler, *supra* note 46; see also Browne et al, *supra* note 29 at 1341.

¹⁷² For example, Twitter shut down a Hamas account. Yet, the content of that account represented valuable contemporary information that allowed to contextualize the situation at a particular point in time. See Browne et al, *supra* note 29 at 1342, 1345.

¹⁷³ Craig Silverman et al, "Verification Handbook: A definitive guide to verifying digital content for emergency coverage" (28 January 2014) ch 9, online: European Journal Center <verificationhandbook.com/downloads/verification.handbook_fr.pdf>.

¹⁷⁴ See Zwier, *supra* note 71 at 205.

¹⁷⁵ Lüge, *supra* note 18.

¹⁷⁶ See also Kleffner, *supra* note 45 at 310; see also Sambei, *supra* note 169 at 234.

make collaboration more timely and effective. Supporting increased capacity could also help better integrate the information and development communities into mass atrocities prevention.¹⁷⁷ Third, an overarching recommendation is to increase academic research efforts on the issue. I have attempted to shed light on certain IHL dynamic changes, yet, on the one hand, my analysis needs to be scrutinized, while, on the other hand, and more importantly, there are myriads of consequential issues I do not address throughout this paper, and what I have addressed may change in the years to come.

Finally, a fourth recommendation associated with the one just discussed is to conduct further research on the nature of social media in the context of means and methods of warfare and accordingly, the uses and pitfalls of social media in contemporary conflicts. Can social media be included under the umbrella of civilian objects, considering its potential positive and important contribution to civilian protection and IHL compliance? Civilian objects are “all objects that are not military objectives,”¹⁷⁸ while objects providing military advantage and contributing to the success of a military action are considered as military.¹⁷⁹ However, when in doubt, there is a clear presumption that the object is civilian.¹⁸⁰ This IHL dichotomy is important as it sets what are permissible targets. Indeed, there is a strict prohibition on attacking civilian objects.¹⁸¹ This prohibition derives from the principle of distinction which provides an absolute obligation to distinguish between military and civilian objectives when launching an attack.¹⁸² The civilian-military dichotomy thus limits the scope of military endeavour. Moreover, what are the implications of social media use in conflicts for targeting operations?

Considering this, and how social media can alter IHL dynamics, it would be pertinent to evaluate in another piece if social media is a military or civilian object, and if such qualification is necessary in the first place. Some have concluded that “computer data are objects under international humanitarian law” and that they are construed as military.¹⁸³ If it is so, this could have potential negative effects on civilians, as autocratic governments could justifiably impose internet blackouts on their population, for example. On the other hand, social media information could cause civilian objects to become lawful objects of attack, leading to a potential expansion of acceptable target sets and the escalation of conflicts. Accordingly, it seems it would be beneficial to bring this issue forward and characterize social media in the hopes of directing States and armed groups’ behaviour. The current theoretical grey zone calls for research considering the consequences of determining these elements could have a significant impact on IHL dynamics.

¹⁷⁷ Kleffner, *supra* note 45 at 310.

¹⁷⁸ API, *supra* note 65 at art 52(1).

¹⁷⁹ *Ibid*, art 52(2).

¹⁸⁰ *Ibid*, art 52(3).

¹⁸¹ *Ibid*, art 52(1).

¹⁸² *Ibid*, art 48; Jonathan Crowe & Kylie Weston-Scheuber, *Principles of International Humanitarian Law* (Cheltenham, GBR: Edward Elgar Publishing, 2013) at 53.

¹⁸³ Kubo Maćák, “Military Objectives 2.0: The Case for Interpreting Computer Data as Objects under International Humanitarian Law” (2015) 48:1 Israel L Rev 55 at 80.

Conclusion

A. Limits

There are intrinsic limits to the research I have presented. First, an essential one that is not specific to the issue of social media's influence on IHL dynamics, is that without States' consent it is hard for IHL to change.¹⁸⁴ This issue is not as prevalent when evaluating how social media affects IHL dynamics. Indeed, social media provides new points of pressure and circumventing mechanisms to mitigate States' lack of will, like pressure by public opinion, crowdsourcing, and increased scrutiny.¹⁸⁵ A second limit is that, although there are more tools to analyze and monitor social media trends than ever before, one needs to ensure that human oversight remains over the increasingly automated process of data collection.¹⁸⁶

Third, there are also ethical issues with the use of social media, one commonly raised being the elite capture or grab. Indeed, some argue that most social media content is generated by people living in urban centres and within a certain demographic.¹⁸⁷ Although NGOs are committed to bridge this gap by providing social media space to poorer and more remote areas,¹⁸⁸ this is an important and unresolved element to consider when dealing with technology-related topics like this one. Finally, some are worried that since part of the data gathered through social media has been used for military purposes, this could blur the line between combatant and civilians.¹⁸⁹ This is a very valid concern which needs to be addressed by conducting a thorough analysis on whether social media is a civilian or military objective, as discussed in section IV.

B. Concluding Remarks

Social media, this recent phenomenon that is now ubiquitous, presents benefits and drawbacks. It has democratized and increased access to information worldwide. Moreover, social media platforms are unique in the information they provide: real time, geo-referenced, open source. Despite these benefits, social media also comes with challenges. At a technical level, the quantity and quality of information generated is difficult to control. Moreover, these platforms' content lacks context, potentially disguising bias as reality. Finally, social media comes with privacy issues, as information can become viral in no time, which can also sometimes jeopardize the security of people in pictures or videos.

Despite the challenges outlined above, social media has played an important role within crisis and humanitarian contexts, as it has filled gaps its counterpart, traditional media, has failed to bridge. Indeed, social media has provided an alternative source of information

¹⁸⁴ ICRC 28th International Conference, *supra* note 52 at 20.

¹⁸⁵ Pfanner, *supra* note 55.

¹⁸⁶ See also Lüge, *supra* note 18 at 6; Gregory, *supra* note 32 at 72.

¹⁸⁷ Költzow, *supra* note 12 at 12.

¹⁸⁸ Stottlemire, *supra* note 41 at 31.

¹⁸⁹ *Ibid* at 29.

for places which typically receive little or no traditional media coverage. Moreover, it has given NGOs the capacity to help areas suffering from internet blackouts and extreme violence. For the reasons outlined above, it is important to critically assess the role of social media, and the information it can provide, within the IHL context. Analyzing how social media has the potential to alter IHL dynamics is all the more important as information is a building block of IHL frameworks. Indeed, information is crucial during conflicts, to inform military endeavour and allow armed forces to respect the IHL principles of proportionality, distinction, and necessity. Information is also essential for IHL compliance more broadly.

“Both civilian life and military operations depend to a growing degree on information and activities confined to cyber-space [...]. If the law of armed conflicts is to retain its relevance, it ought to reflect this change.”¹⁹⁰ I have argued throughout this paper that the type of information available on social media can be salutary for IHL compliance. Indeed, social media can positively contribute to changing monitoring, prevention, and enforcement dynamics in the following ways. First, social media facilitates NGOs monitoring and reporting efforts, thus enhancing their capacity in this regard. This is so because social media renders it less costly to gather information on conflict situations and expose IHL violations to an extended public. Social media also helps NGOs hold States more accountable. Social media has thus provided ammunition, i.e. information, and new points of pressure, i.e. reporting platform and public opinion influencers, for NGOs to alter state behaviour within the IHL context.

Second, although a very rigid and lacking IHL framework exists for conflict prevention, social media has had a salutary effect in this regard by helping fill the gaps. Indeed, the information available through social media contributes to early-warning system initiatives because of its particularities, thus providing more knowledge for the international community and civil society to react to early signs of egregious crimes. This changes IHL dynamics by enhancing the preventive capacity of the international community and NGOs, which becomes crucial as post-conflict dynamics have also changed; reconciliation is becoming increasingly difficult as there is no more blind trade between justice and truth.

Third, social media also has the potential salutary effect of facilitating IHL enforcement. Social media contributes to making evidence gathering faster and safer, thus decreasing availability issues that are especially common when dealing with evidence of war crimes and crimes against humanity. Moreover, although admissibility hurdles of reliability and authentication are particularly at issue for social media derived evidence, they have a limited impact, as international courts and tribunals generally apply a flexible admissibility standard. Despite reliability and authentication only impacting the weight attributed to social media derived evidence, these hurdles can and should be addressed using verification techniques, like crowdsourcing, and establishing collection institutionalization.

To conclude, accepting social media as an integral part of IHL dynamics could mean more prevention, greater scrutiny, and more victim-responsive justice, amongst other things. Social media can be effective as it permits to partially circumvent issues like lack of

¹⁹⁰ Maćák, *supra* note 183 at 80.

State will by providing new points of pressure for actors willing to hold States accountable and enhance IHL compliance. Accordingly, social media acts as an enabling tool for actors like NGOs, who have been pushing for such changes for a long time.

For this reason, I suggest a further structural change somewhat independent of social media. I support the proposition that an individual complaint mechanism should be put in place despite the existing concerns in this regard. This mechanism could circumvent the States' consent issue in the long term. It would also contribute to more justice and thus increased compliance as it would allow IHL to re-appropriate its violations and perpetrators. Furthermore, such a system, supported by the rise of social media in IHL's evidentiary context, would be more victim-centred and thus would better fulfil the objectives IHL seeks to achieve. IHL was set up to protect its beneficiaries: the wounded, the civilians, the combatants *hors de combat*, all these individuals that have no say in the current state-centric IHL framework. Acknowledging the increasing role of social media within the IHL framework and implementing an individual complaint mechanism has downfalls to be certain, but social media's potential for attenuating a paradox plaguing contemporary IHL undoubtedly justifies scrutinizing further its uses and the hope they generate.