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BLURRED LINES: SOCIAL MEDIA IN ARMED CONFLICT

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[1] Technological advancements have revolutionised the social interactions of global society and in turn, influenced the means and methods of warfare; increasing the involvement of civilians in hostilities, not only as victims, but also as participants.¹ Together with the involvement of multiple state and non-state actors, civilian participation makes these modern conflicts all the more unpredictable, challenging the traditional notion of direct participation in hostilities established under international law.

SOCIAL MEDIA: A MODERN WEAPON

[2] The first “internet-war” in Kosovo witnessed the utilisation of the Internet for the advancement of military operations.² Non-state actors, specifically terrorist organisations, were the first to harness social media networks for the recruitment of followers, dissemination of information, and gathering of intelligence.³ State and inter-state actors have also gradually embraced social media as platforms suited for military operations;⁴ effectively weaponising them through their adaptation and utilisation to “achieve [...] ‘military’ effects.”⁵

[3] Social networking platforms (like Facebook) and microblogging websites (like Twitter) are examples of *social media*, and they enable social interaction through the creation, collection, sharing and delivery of user-

¹ See Andreas Wenger & Simon J. A. Mason, *The Civilianization of Armed Conflict: Trends and Implications*, 90 INT’L REV. RED CROSS 835, 837, 838–40 (2008).

² See THOMAS ELKJER NISSEN, #THEWEAPONIZATIONOFSOCIALMEDIA: @CHARACTERISTICS_OF_CONTEMPORARY_CONFLICT, 8 (2015).

³ See *id.* at 75–76.

⁴ See, e.g., John Pollock, *People Power 2.0: How Civilians Helped Win the Libyan Information War*, MIT TECH. REV. (Apr. 20, 2012), <https://www.technologyreview.com/s/427640/people-power-20/> [https://perma.cc/F33E-852R] (NATO used social media in conjunction with standard press-office fare for announcements during the Libyan Information War).

⁵ See NISSEN, *supra* note 2, at 81–82.

generated content, such as photographs and written posts.⁶ Information from social media sites has been used for cyber operations,⁷ as well as for the singling out and targeting of individuals believed to be linked with the opposing parties to a conflict.⁸ “Open source intelligence” has proven instrumental for parties with no boots on the ground in the conflict,⁹ whilst controlling the narrative through the sharing of information on such networks has also become a vital aspect of psychological warfare.¹⁰

[4] However, the “weaponisation” of social media can become particularly problematic when civilians undertake it in a way that it provides military advantages to one of the warring parties.

⁶ See *id.* at 40.

⁷ See *id.*, at 8; Josh Constine, *ISIS “Cyber Caliphate” Hacks U.S. Military Command Accounts*, TECHCRUNCH (2015), <https://techcrunch.com/2015/01/12/cyber-caliphate/?guccounter=1> [<https://perma.cc/DMW9-GX6X>]; Armin Rosen, *A Self-Proclaimed ISIS Fan is Hacking Local News Outlets*, BUS. INSIDER (Jan. 6, 2015, 3:10 PM), <http://www.businessinsider.com/a-self-proclaimed-isis-fan-is-hacking-local-news-outlets-2015-1> [<https://perma.cc/F7VU-QKEH>].

⁸ See NISSEN, *supra* note 2, at 82; John Brown, *Arrest of Palestinians for Potential Terror Attacks Brings New Meaning to ‘Minority Report,’* HAARETZ (Apr. 24, 2017, 10:50 PM), https://www.haaretz.com/opinion/.premium-arrest-of-palestinians-brings-new-meaning-to-minority-report-1.5464664?=&ts=_1551810679190 [<https://perma.cc/8J25-MTLJ>].

⁹ See Pollock, *supra* note 4.

¹⁰ See *e.g.*, NISSEN, *supra* note 2, at 84; J.M. Berger, *How ISIS Games Twitter*, ATLANTIC (June 16, 2014), <https://www.theatlantic.com/international/archive/2014/06/isis-iraq-twitter-social-media-strategy/372856/> [<https://perma.cc/995B-Y4KW>] (noting that ISIS uses social media to “inflate and control its message”); James P. Farwell, *The Media Strategy of ISIS*, 56 SURVIVAL: GLOBAL POL. & STRATEGY 49, 50 (2015); Chris Zambelis, *Information Wars: Assessing the Social Media Battlefield in Syria*, 5 CTS SENTINEL 19, 19–20 (2012).

CIVILIANS USING SOCIAL MEDIA: #DIRECTPARTICIPANTS?

[5] With more than half of the world's population using the Internet, out of which 71% were active social media users in 2017,¹¹ it is evident that social media platforms have infiltrated the everyday lives of people around the globe. The line distinguishing civilians from direct participants, however, becomes blurred when civilians collect and share information through social media that has real military effects for the conflicting parties.

[6] This challenges the principle of distinction, and inevitably results in legal uncertainty as to the applicability of the general protections from attack afforded to civilians under International Humanitarian Law (IHL).¹² Although military powerful states have not ratified all relevant treaties, they are still considered bound due to the rules' customary status.¹³ As the protection of civilians is not absolute, once civilians are considered direct

¹¹ See *Global Digital Population as of January 2019 (in millions)*, STATISTA.COM, <https://www.statista.com/statistics/617136/digital-population-worldwide/> [<https://perma.cc/5D7N-6N82>]; *Number of Social Media Users Worldwide from 2010 to 2021 (in billions)*, STATISTA.COM, <https://www.statista.com/statistics/278414/number-of-worldwide-social-network-users/> [<https://perma.cc/UK22-878B>].

¹² See Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Adoption of an Additional Distinctive Emblem (Protocol III), Aug. 12, 2005, 2404 U.N.T.S. 261; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, 1125 U.N.T.S. 3 [hereinafter 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 (Protocol II), June 8, 1977, 1125 U.N.T.S. 609 [hereinafter Additional Protocol II]; Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287.

¹³ See *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. Rep. 226, 257 (July 8).

participants in the hostilities, their protection from attack is forfeited, turning them into lawful targets.¹⁴

[7] The International Committee of the Red Cross (ICRC) and NATO sought to bridge the definitional gaps in the legal provisions by providing guidance for their application in both traditional and cyber conflicts.¹⁵ The ICRC Interpretive Guidance proposed the division of direct participation into three elements: (a) threshold of harm, (b) direct causation, and (c) belligerent nexus,¹⁶ a tripartite approach also adopted in the Tallinn Manuals.¹⁷ Whilst the ICRC maintained a restrictive stance to ensure that the IHL-positing protection of civilians would be guaranteed, NATO was expansive in its interpretation of certain aspects, so as to safeguard military superiority.

[8] Social media platforms could be *weaponised* by civilians in a number of ways; for example, by using Google Maps to identify the coordinates of military objectives and in turn share them on Twitter or Facebook.¹⁸ Civilians could also use Facebook, Twitter, and Skype for crowdsourcing in order to gather technical knowledge and assist one of the

¹⁴ See Michael N. Schmitt, *Deconstructing Direct Participation in Hostilities: The Constitutive Elements*, 42 N.Y.U.J. INT'L L. & POL. 697, 698 (2010).

¹⁵ See generally NILS MELZER, INTERPRETIVE GUIDANCE ON THE NOTION OF DIRECT PARTICIPATION IN HOSTILITIES UNDER INTERNATIONAL HUMANITARIAN LAW (2009); INTERNATIONAL GROUP OF EXPERTS, TALLINN MANUAL ON THE INTERNATIONAL LAW APPLICABLE TO CYBER WARFARE (Michael N. Schmitt ed., 2013); INTERNATIONAL GROUP OF EXPERTS, TALLINN MANUAL 2.0 ON THE INTERNATIONAL LAW APPLICABLE TO CYBER OPERATIONS (Michael N. Schmitt & Liis Vihul eds., 2017) [hereinafter TALLINN MANUAL 2.0].

¹⁶ See MELZER, *supra* note 15, at 46.

¹⁷ See Collin Allan, *Direct Participation in Hostilities from Cyberspace*, 54 VA. J. INT'L L. 173, 193 (2013).

¹⁸ Although not a traditional social media site, the author contends that for the context of this paper and in light of the recent *share* options added to the website, Google Maps falls under the social media category.

parties to the conflict.¹⁹ Ultimately, there are certain types of social media activities that can be so *harmful*²⁰ and so *direct*²¹ to one of the parties of a conflict, that are capable of triggering the applicability of the direct-participation-in-hostilities principle.

[9] Use of social media networks that can be deemed to satisfy the three-fold test would be sufficient to render a civilian a direct participant in the hostilities, regardless of the temporal and geographical proximity of the act to its eventual effects. Nevertheless, according to the legal provisions, civilians can be legitimate military targets only *for such time* as they directly participate in the hostilities.²²

[10] The exact point when a civilian can be deemed as directly participating in the hostilities depends on a case-by-case analysis of the preparatory measures undertaken before the hostile act.²³ Considering the relatively limited time period required for a social media activity to be executed, it would seem appropriate that civilians remain direct participants for an amount of time after their engagement, therefore, providing a more realistic window of opportunity for the victim or intended victim to react. Maintaining the direct participant status for such time as there can be a *reasonable causal link* between the individual and the hostilities is an appropriate way of dealing with direct participation in the social media context.²⁴ The problem that follows is the lack of a universal understanding as to the meaning of *reasonable causal link*. Nevertheless, in the social

¹⁹ See, e.g., Pollock, *supra* note 4.

²⁰ See MELZER, *supra* note 15, at 47–48.

²¹ See *id.* at 51–53.

²² See Additional Protocol I, *supra* note 12, art. 51(3); Additional Protocol II, *supra* note 12, art. 13(3).

²³ See MELZER, *supra* note 15, at 65–68.

²⁴ See TALLINN MANUAL 2.0, *supra* note 15, at 101.

media context, “each civilian action must be treated separately”²⁵ even if the perpetrator has repeatedly engaged in hostile acts; especially since social media activity is often undertaken anonymously, so intent to re-engage in such actions can never be accurately presumed.

CONCLUSION

[11] The lack of a settled approach in determining the applicability of direct participation in hostilities implies that if actors of an armed conflict are adversely affected by hostile civilian acts, they use their own interpretations when applying the IHL provisions, driven by their own motives. Whilst the novelty of social media warfare requires the application of IHL rules in a manner flexible enough to meet the complexities of this modern battlefield, the proliferation and widespread use of social media platforms seem to necessitate an adequately reserved interpretation of the rules so as to ensure the protection of civilians. There is a pressing need, therefore, for a comprehensive manual to provide guidance to international actors and form the basis for the development of this new controversial area of IHL.

²⁵ Allan, *supra* note 17, at 192.